

Legal Services

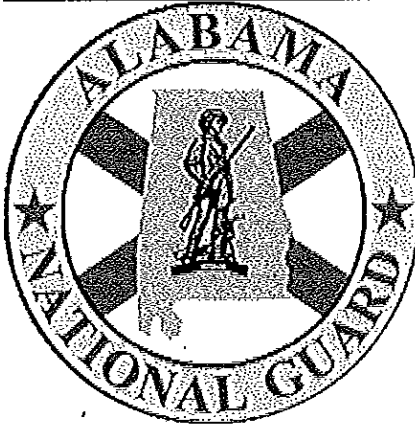
Military Justice

**State Military Department
Joint Forces Headquarters, Alabama National Guard
Montgomery, AL
10 January 2014**

UNCLASSIFIED

Legal Services

Military Justice



History. This is the first publication of this State Military Department Regulation.

Summary. This regulation implements, the Alabama Manual for Courts-Martial 2013; The Alabama Code of Military Justice (ACMJ); and includes matters of policy and procedure pertaining to the administration of military justice within the Alabama National Guard. This regulation adopts the Manual for Courts-Martial's (MCM) Rules for Courts-Martial, Military Rules of Evidence contained in the MCM, 2012 edition, and any all Army and Air Force Regulations or Instructions not inconsistent with the ACMJ.

Applicability. This regulation applies to the Alabama National Guard, the Army National Guard/Army National Guard of the United States, and the Air National Guard/Air National Guard of the United States unless otherwise stated. The Alabama Code of Military Justice will not be applicable to offenses committed prior to the implementation date of the ACMJ.

Proponent and exception authority. The proponent of this regulation is The Alabama National Guard Staff Judge Advocate (and/or Senior Force Judge Advocate). The proponent has the authority to approve exceptions or waivers to this

regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include a formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

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

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Alabama National Guard Office of The Staff Judge Advocate, 1720 Congressman W. L. Dickinson Drive, Wing 2C, Montgomery, AL 36109-0711.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Alabama National Guard Office of The Staff Judge Advocate, 1720 Congressman W.L. Dickinson Drive, Wing 2C Montgomery, Alabama 36109-0711.

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Implementation Authority. In Accordance With the provisions of Article 149 of the Alabama Code of Military Justice (ACMJ), The Adjutant General of the Alabama National Guard and the Governor of the state of Alabama approve and adopt these implementing guidelines, Alabama Manual for Courts-Martial (AMCM) and State Military Department Regulation (SMDR) 27-10, promulgated by The Adjutant General in accordance with Section 31-2-58, Code of Alabama 1975. (See Appendix H, herein).

Approved. 3 JAN 14

PERRY O. SMITH
Major General, ALNG
Adjutant General

Approved. Jan. 10 2014

Robert Bentley
ROBERT BENTLEY
Governor of Alabama

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Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Purpose • 1–1, page 1

References • 1–2, page 1

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

Responsibilities • 1–4, page 1

Chapter 2

Investigation and Prosecution of Crimes With Concurrent Jurisdiction, page 1

Implementing authority • 2–1, page 1

Local application • 2–2, page 1

Action by convening authority • 2–3, page 1

Grants of immunity • 2–4, page 2

Reporting requirements for cases involving national security crimes • 2–5, page 2

Chapter 3

Nonjudicial Punishment, page 2

Section I

Applicable Policies (Ch. 3 AMCM, 2013), page 2

General • 3–1, page 2

Use of nonjudicial punishment • 3–2, page 2

Relationship of nonjudicial punishment to nonpunitive measures (para 3-2e, Ch. 3, AMCM, 2013) • 3–3, page 2

Personal exercise of discretion (para 3-2b, Ch. 3, AMCM, 2013) • 3–4, page 3

Reference to superior • 3–5, page 3

Filing determination • 3–6, page 4

Section II

Authority (para 3-5, Ch. 3, AMCM, 2013), page 4

Who may impose nonjudicial punishment • 3–7, page 4

Persons on whom nonjudicial punishment may be imposed • 3–8, page 5

Minor offenses • 3–9, page 6

Double punishment prohibited • 3–10, page 6

Restriction on punishment after exercise of jurisdiction by civilian authorities • 3–11, page 6

Statute of limitations • 3–12, page 6

Section III

Procedure (para 3-7, Ch. 3, AMCM, 2013), page 7

General • 3–13, page 7

Preliminary inquiry • 3–14, page 7

Commander's guide for notification and imposition • 3–15, page 7

Summarized proceedings • 3–16, page 7

Formal proceedings (para 3-8, Ch. 3, AMCM, 2013) • 3–17, page 8

Notification and explanation of rights • 3–18, page 8

Section IV

Punishment (para 3-9, Ch. 3, AMCM, 2013), page 10

Rules and limitations • 3–19, page 10

Effect on promotable status • 3–20, page 14

Effective date and execution of punishments • 3–21, page 14

Announcement of punishment • 3–22, page 14

Section V

Suspension, Vacation, Mitigation, Remission, and Setting Aside (para 3-13 and 3-9i, Ch. 3, AMCM 2013), page 15

Contents—Continued

Clemency • 3–23, page 15
Suspension • 3–24, page 15
Vacation • 3–25, page 15
Mitigation • 3–26, page 16
Remission • 3–27, page 16
Setting aside and restoration • 3–28, page 16

Section VI

Appeals (para 3-14, Ch. 3, AMCM, 2013), page 17

General • 3–29, page 17

Who may act on an appeal • 3–30, page 17

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

Action by the imposing commander or the successor-in-command • 3–32, page 18

Action by the superior authority • 3–33, page 18

Action by a judge advocate • 3–34, page 18

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

Section VII

Records of Punishment, AGO Form 2627 (para 3-15, Ch. 3, AMCM, 2013), page 19

Records of punishment • 3–36, page 19

Distribution and filing of AGO Form 2627 and allied documents • 3–37, page 19

Supplementary action • 3–38, page 20

Reconciliation log • 3–39, page 21

Time for distribution of initial AGO Form 2627 • 3–40, page 21

Transfers of punishments wholly set aside, or changes of status • 3–41, page 21

Transfer or removal of records of nonjudicial punishment • 3–42, page 21

Use of records • 3–43, page 23

Chapter 4

Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities, page 23

General • 4–1, page 23

Policy • 4–2, page 23

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 trial counsel • 5–3, page 24

Certification and use of lawyers • 5–4, page 24

Qualified counsel at courts-martial • 5–5, page 24

Qualified individual civilian counsel at courts-martial • 5–6, page 24

Individual military counsel • 5–7, page 24

Professional standards • 5–8, page 25

Contents—Continued

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 investigations • 5–12, *page 26*

Section III

Pretrial, page 26

Preparation of charge sheet • 5–13, *page 27*
Forwarding of charges • 5–14, *page 27*
Convening authority actions upon receipt of approved resignation for the good of the service in lieu of general court-martial • 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 28*
Witness attendance • 5–19, *page 29*

Section IV

Trial, page 29

Procedure for summary courts-martial • 5–20, *page 29*
Arraignment and pleas • 5–21, *page 29*
Disclosure of pretrial restraint • 5–22, *page 29*
Entry of findings of guilty pursuant to a plea • 5–23, *page 30*
Personal identifiers of witnesses • 5–24, *page 30*
Special courts-martial guidance • 5–25, *page 30*
Sentencing • 5–26, *page 30*

Section V

Post-trial, page 31

Report of result of trial • 5–27, *page 31*
Convening authority action • 5–28, *page 31*
Suspension of sentence • 5–29, *page 31*
Vacation of suspended sentences • 5–30, *page 31*
Disposition of recommendations and reviews after bad-conduct discharges approved • 5–31, *page 31*
Clemency under Article 74 • 5–32, *page 31*
Petition for new trial under Article 73 • 5–33, *page 32*

Section VI

Records of Trial, page 32

Preparation • 5–34, *page 32*
Readability of records of trial • 5–35, *page 33*
Retention of trial notes or recordings • 5–36, *page 33*
Authentication of records of trial • 5–37, *page 33*
Service of record of trial on the accused • 5–38, *page 33*
Disposition of records of trial • 5–39, *page 34*
Transmittal of records of trial • 5–40, *page 34*
Delegation of authority to modify procedures • 5–41, *page 34*

Chapter 6

United States Army Trial Defense Service, page 34

General • 6–1, *page 34*
Mission • 6–2, *page 34*
Organization • 6–3, *page 34*
Administrative and logistical support • 6–4, *page 35*
Funding responsibilities • 6–5, *page 36*

Contents—Continued

Training • 6–6, page 37
Mutual support responsibilities • 6–7, page 37
Detail of defense counsel • 6–8, page 37
Requests for individual military counsel • 6–9, page 38
Professional standards • 6–10, page 38

Chapter 7

United States Army Trial Judiciary-Military Judge Program, page 38

General • 7–1, page 38
Qualifications of military judges • 7–2, page 39
Functions and duties of military judges • 7–3, page 39
Detailing of military judges • 7–4, page 40
Administrative and logistical support • 7–5, page 40
Rules of court • 7–6, page 41
Requests for military judges as individual military counsel • 7–7, page 41
Search, Seizure, and Apprehension Authorizations • 7–8, page 41
Oaths • 7–9, page 41
Execution and disposition of authorizations and other related papers • 7–10, page 42
Recovery and disposition of property • 7–11, page 42
Reapplication • 7–12, page 42
Legality of searches and seizures • 7–13, page 42

Chapter 8

Courts of Inquiry, page 42

General • 8–1, page 42

Chapter 9

Oaths, page 42

General • 9–1, page 42
Persons required to be sworn • 9–2, page 42
Oath administration procedure for military judges • 9–3, page 43
Oath administration procedure for court members • 9–4, page 43
Oath administration procedure for reporters • 9–5, page 43
Oath administration procedure for interpreters • 9–6, page 43
Forms of oaths for court for martial personnel • 9–7, page 44
Oath administration procedure for persons providing sworn information in support of requests for authorizations to search and seize and authorizations to apprehend • 9–8, page 44
Form of oaths for probable cause searches, seizures and apprehensions • 9–9, page 45
Form of oath for the accused following a plea of guilty • 9–10, page 45

Chapter 10

Court-Martial Orders, page 45

Types of court-martial orders • 10–1, page 45
Convening orders • 10–2, page 45
Promulgating orders • 10–3, page 45
Format for a summary court-martial's court-martial orders • 10–4, page 46
Format for court-martial orders • 10–5, page 46
Modification of findings or sentence • 10–6, page 47
Distribution of court-martial orders • 10–7, page 47

Chapter 11

Appellate Review Matters, page 49

Scope • 11–1, page 49
Appellate advice after trial • 11–2, page 49
Rules of appellate procedure • 11–3, page 49

Contents—Continued

Chapter 12

The ALNG Military Justice Report, page 49

Preparation • 12-1, page 49

Frequency and content • 12-2, page 49

Routing and due date • 12-3, page 49

Chapter 13

Allegations of Misconduct and Suspension of Counsel and Military Judges, page 49

Section I

General, page 49

Scope • 13-1, page 50

Withdrawal of certification by The Judge Advocate General • 13-2, page 50

Section II

Suspension of Counsel, page 50

General • 13-3, page 50

Grounds for suspension • 13-4, page 50

Action to suspend military counsel • 13-5, page 51

Action to suspend civilian counsel • 13-6, page 51

Modification or revocation of suspension or decertification • 13-7, page 51

Removal of counsel or reassignment of duties • 13-8, page 51

Section III

Suspension of Military Judges, page 51

General • 13-9, page 51

Grounds • 13-10, page 51

Removal of a military judge • 13-11, page 52

Procedure • 13-12, page 52

Modification or revocation of suspension or decertification • 13-13, page 52

Chapter 14

Victim and Witness Assistance, page 52

Section I

General Description, page 52

Purpose • 14-1, page 52

Policy • 14-2, page 52

Application • 14-3, page 53

Objectives • 14-4, page 53

Definitions • 14-5, page 53

Section II

Victim/Witness Assistance Program, page 53

General • 14-6, page 54

Victim/witness liaison • 14-7, page 54

Identification of victims and witnesses • 14-8, page 54

Initiation of liaison service • 14-9, page 55

Rights of crime victims • 14-10, page 55

Training and publicity • 14-11, page 55

Section III

Victim Services, page 56

Medical, financial, legal, and social services • 14-12, page 56

Stages and role in military criminal justice process • 14-13, page 56

Notification and description of services provided to victims of crime • 14-14, page 56

Contents—Continued

Consultation with victims • 14–15, page 57
Property return and restitution • 14–16, page 57

Section IV

Witness Services, page 58

Notification and description of services provided to witnesses • 14–17, page 58
Limitations • 14–18, page 58

Section V

Victim and Witness Services, page 59

Protection of victims and witnesses • 14–19, page 59
Notification to employers and creditors • 14–20, page 59
Witness fees and costs • 14–21, page 59
Local services • 14–22, page 60
Transitional compensation • 14–23, page 60
Requests for investigative reports or other documents • 14–24, page 60

Section VI

Confinement Facilities and Central Repository, page 60

Confinement facilities • 14–25, page 60
Reporting requirements and responsibilities • 14–26, page 61
Evaluation of Victim/Witness Liaison Program services • 14–27, page 61

Chapter 15

Military Justice Training, page 61

General • 15–1, page 61
Training organization • 15–2, page 61
Course development and instruction • 15–3, page 61

Chapter 16

Complaints under Article 138, page 62

Section I

General, page 62

Purpose • 16–1, page 62
Applicability • 16–2, page 62
Policy • 16–3, page 62
Inappropriate subject matter for Article 138 complaints • 16–4, page 62

Section II

Making a Complaint, page 63

Request for redress • 16–5, page 63
Complaint • 16–6, page 63
Legal advice • 16–7, page 64

Section III

Action on the Complaint, page 64

Action by the person receiving the complaint • 16–8, page 64
Determination not required by officer exercising general court-martial jurisdiction • 16–9, page 65
Determination required by officer exercising general court-martial jurisdiction • 16–10, page 65
Action by Headquarters, Department of the Army • 16–11, page 66

Appendixes

- A. References, *page 67*
- B. Suggested Guide for Conduct of Nonjudicial Punishment Proceedings, *page 74*
- C. Attorney-Client Guidelines, *page 78*
- D. Victim/Witness Checklist, *page 81*
- E. Maximum punishment chart table 3-1, *page 13*
- F. Guidance on DNA, civilians, and jurisdiction during war and contingency operations, *page 84*
- G. Internal control evaluation checklist, *page 84*
- H. Implementation Authority, *page 86*

Table List

- Table 3–1: Maximum punishments for enlisted members and commissioned officers, *page 13*
- Table 3–2: Removal of records of nonjudicial punishment from military personnel files, *page 22*
- Table 3-3: Types of Training periods and Assemblies, *page 14*

Figure List (All figures will be added by supplementation)

- Figure 3–1: Sample of completed AGO Form 2627–1,
- Figure 3–2: Sample of completed AGO Form 2627
- Figure 3–3: Sample of a completed AGO Form 2627–2
- Figure 8–1: A sample completed affidavit
- Figure 8–1: A sample completed affidavit—continued,
- Figure 11–1: Sample initial general court martial promulgating order
- Figure 11–1: Sample initial general court-martial promulgating order—continued
- Figure 11–2: Sample action and supplementary court-martial order when accused waives or withdraws appellate review
- Figure 11–3: Sample supplementary general court-martial order remitting confinement prior to completion of appellate review
- Figure 11–4: Sample final supplementary general court-martial order after appeal process is complete,
- Figure 11–5: Sample vacating order when suspended bad-conduct discharge is vacated by convening authority and case is pending appeal,
- Figure 11–6: After appeal process complete, a sample order executing a bad-conduct discharge,
- Figure 11–7: Sample general court-martial promulgating order rescinding deferment previously granted after convening authority has taken action,
- Figure 16–1: Sample format for request for redress,
- Figure 16–2: Sample format for complaint under the provisions of ACMJ, Art. 138,
- Figure 16–3: Sample format for ACMJ, Art. 138 complaints with complicating factors,
- Figure 16–3: Sample format for ACMJ, Art. 138 complaints with complicating factors—continued,

Glossary

Chapter 1 Introduction

1-1. Purpose

This regulation prescribes the policies and procedures pertaining to the administration of military justice and implements the Alabama Manual for Courts Martial (AMCM), hereafter referred to as the AMCM and the Rules for Courts Martial (RCMs) adopted and referred to in the AMCM.

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 terms used in this regulation are explained in the glossary. See also RCM 103 for definitions of terms used in the AMCM.

1-4. Responsibilities

a. The Judge Advocate General (TJAG) is responsible for the overall supervision and administration of military justice within the Army. The Alabama National Guard Staff Judge Advocate (ALNG-SJA) for The Adjutant General of Alabama is responsible for the overall supervision and administration of military justice within the Alabama National Guard.

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. The Senior Military Judge of the Alabama National Guard (when applicable) is responsible for the supervision and administration of the military judges detailed to courts-martial's under the ACMJ.

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. The Regional Defense Counsel and/or designee, Senior Defense Counsel for the State of Alabama is responsible for the detail, supervision, and control of defense counsel services within the Alabama National Guard. For information pertaining to the assignment of Air National Guard (ANG) area defense counsel see Chapter 6-3 (g)(2) this regulation.

Chapter 2 Investigation and Prosecution of Crimes With Concurrent Jurisdiction

2-1. Implementing authority

The Governor of the State of Alabama is the implementing authority for the Alabama Code of Military Justice (ACMJ). The Adjutant General, as the Governor's appointed military advisor, will review and approve the implementation documents: the Alabama Manual for Courts-Martial (AMCM) and this regulation, State Military Department Regulation (SMDR) 27-10, for use in accordance with the ACMJ. A memorandum of understanding (MOU), may be, but is not required to be entered, between the State Military Department (SMD) and the Attorney General's Office, delineating the areas of responsibility for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction.

2-2. Local application

A proper civilian court has primary jurisdiction of an offense when an act or omission violates both this code and civilian criminal law, foreign or domestic. In such cases, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached. Courts-martial shall have primary jurisdiction over all other offenses defined in the ACMJ, where there is concurrent jurisdiction (i.e., theft of property). A proper civilian court may decline and/or refuse to investigate and/or prosecute. Upon such civilian courts indication of their refusal to investigate and/or prosecute, the appropriate military commander may proceed with military administrative procedures, to include if applicable Courts-Martial. The military record must adequately/accurately document that the civilian courts were notified and have either refused or declined to prosecute or investigate.

2-3. Action by convening authority

When an act or omission violates both the ACMJ and civilian criminal law, before any action with a view toward court-martial can be taken, the courts-martial convening authorities must consult with a proper State civilian

authority and obtain a determination declining to exercise their authority to prosecute or the dismissal of charges, provided jeopardy has not attached. For federal prosecutions, see MOU, appendix 3, Manual for Courts-Martial (MCM) 2012 edition, in cases likely to be prosecuted in the U.S. District courts.

2-4. Grants of immunity

a. Persons subject to the ACMJ. A grant of immunity may be made under the ACMJ, RCM 704. The Courts-Martial Convening Authority (CMCA) may extend a grant of immunity from action under the ACMJ. “Convening authority includes a commissioned officer in command for the time being and successors in command.” (See Rule 103 Rules of Courts-Martial (RCM) 504, Convening courts-martial; and Ch. 5 Appointment and Composition of Courts-Martial, Articles 22-24 AMCM)

b. Persons not subject to the ACMJ. If a prospective witness is not subject to the ACMJ the CMCA may extend a grant of immunity from action under the ACMJ. Trial Counsel is responsible for drafting a memo for CMCA for outlining the nature of the testimony and 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. The request for immunity must be routed through the ALNG Office of the Staff Judge Advocate for The Adjutant General, 1720 Congressman William L. Dickinson Drive, Montgomery, AL 36109. (See AR 27-10 2-4 subparagraph e, for additional procedures).

c. Cases involving threats to national security. (See AR 27-10, paragraph 2-4c and 2-5).

2-5. Reporting requirements for cases involving national security crime.

Refer to Army Regulation (AR) 27-10, Military Justice.

Chapter 3 Nonjudicial Punishment

Section I

Applicable Policies (para 3 - 1, Ch. 3, AMCM, 2013)

3-1. General

This chapter implements and amplifies Alabama Code of Military Justice (ACMJ), Art. 15, and Part V, Alabama Manual for Courts-Martial (AMCM), 2013. No action should be taken under the authority of the ACMJ, Article 15 without referring to the appropriate provision of the AMCM 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 appropriate action with respect to the proceedings.

3-2. Use of nonjudicial punishment

A commander should use administrative and leadership measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial punishment (see para 3-1, Chapter 3, AMCM, 2013). Use of nonjudicial punishment is proper in all cases involving minor offenses in which administrative and leadership measures (nonpunitive) are considered inadequate or inappropriate. If it is clear that nonjudicial punishment will not be sufficient to meet the ends of justice, more stringent measures must be taken. Prompt action is essential for nonjudicial punishment to have the proper corrective effect. Nonjudicial punishment may be imposed to—

- a.* Correct, educate, and reform offenders whom the imposing commander determines cannot benefit from less stringent measures.
- b.* Preserve a Service member’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 3-2e, Ch. 3, AMCM 2013)

a. General. Nonjudicial punishment is imposed to correct misconduct in violation of the ACMJ. 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 or instruction (see Army Regulation (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 ACMJ, Art. 15. These two separate and distinct kinds of authority should not be confused.

b. Reprimands and admonitions.

(1) Commanding officers have authority to give admonitions or reprimands either as an administrative measure or as nonjudicial punishment. If imposed as a punitive measure under ACMJ, Art. 15, the procedures set forth in paragraph 3-7 and/or 3-8, Ch. 3, AMCM, 2013, 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 ACMJ, Art. 15 (see AR 600-37). Admonitions and reprimands imposed as punishment under ACMJ, Art. 15, whether administered orally or in writing (see para 3-9d, Ch. 3, AMCM, 2013), should state clearly that they were imposed as punishment under that article.

c. Extra training or instruction. One of the most effective nonpunitive measures available to a commander is extra training or instruction (see AR 600-20). It is used when a service member's duty performance has been substandard or deficient; for example, a Service member 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 (commonly referred to as extra duty) may be conducted after duty hours, so long as the service member is in a duty status at the time the extra training is being performed. The determination to impose extra training or instruction that is to be conducted after duty hours must not be excessive in nature or cause additional undue hardship upon the service member, i.e. if the service member's home of record is more than fifty (50) miles away and/or such other conditions or circumstances to avoid causing undue hardship.

3-4. Personal exercise of discretion (para 3-2b, Ch.3, A MCM, 2013)

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

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

(2) Determining whether the Service member committed the offense(s) where ACMJ, Art. 15 proceedings are initiated.

(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 ACMJ, Art. 15 or issue regulations, orders, or so-called "guides" that either directly or indirectly suggest to subordinate commanders that—

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

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

c. A superior commander may send or return a case to a subordinate for appropriate disposition if necessary and within the jurisdiction of the subordinate. A superior commander may also reserve personally, or to the superior commander's delegate, the right to exercise ACMJ, Art. 15 authority over a particular case or over certain categories of offenders or offenses (see para 3-7d and table of maximum punishments Table 3-1, below).

3-5. Reference to superior

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

(1) The nature and circumstances of the offense.

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

b. If a commander determines that the commander's authority under ACMJ, Art. 15 is insufficient to impose a proper punishment, the case may be referred to an appropriate superior. The same procedure will be followed if the authority of the commander to exercise ACMJ, Art. 15 powers has been withheld or limited (see paras 3-4, above, and 3-7d, below). In transmitting a case for action by a superior, no recommendation of the nature or extent of the punishment to be imposed will be made. Transmittal should normally be accomplished by written correspondence using Adjutant General Officer (AGO) Form 5109 (Request to Superior to Exercise Art. 15, ACMJ, Jurisdiction). (See table of maximum punishments Table 3-1)

3-6. Filing determination

a. A commander's decision on whether to file a record of nonjudicial punishment on the performance section of a Service member's official military personnel file (OMPF) is as important as the decision on whether to impose nonjudicial punishment itself. In making a filing determination, the imposing commander must weigh carefully the interests of the Service member'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 Service member's age (as it relates to judgment and experience), grade, total service (with particular attention to the Service member's recent performance and past misconduct), and whether the Service member has more than one record of nonjudicial punishment directed for filing in the restricted section (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 section.

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

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 Air Force Instruction 51-201 (AFI 51-201) for Air Force personnel).

Section II

Authority (para 3-5 Ch. 3, AMCM 2013)

3-7. Who may impose nonjudicial punishment

a. Commanders. Only after consulting with their servicing Judge Advocate, may impose nonjudicial punishment on military personnel of their command, 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 ACMJ, Art. 15.

(1) The term commander, as used in this chapter, means a Commissioned Officer 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. In addition the term commander includes the definition as set out in Article 1, para (5), ACMJ.

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

(3) Commands include the following:

(a) Wings, Squadrons, Companies, troops, and Batteries.

(b) Numbered units, Groups, and Detachments.

(c) Missions.

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

(e) Service schools.

(f) Area commands. (See National Guard Regulation (NGR) 10-2, State Area Commands)

(g) Commander of the Alabama Military Academy (Officer Candidate School (OSC) 200th Regiment, ALNG).

(h) The Commander of an Active Component Unit which is the equivalent of sections 3(a) thru (g) above to whom members of the Alabama National Guard are assigned or attached respectively.

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

commandant, chief of mission, or superintendent.

b. Multi-Service commanders and officers in charge. (See also AR 27-10 3-7b). A multi-Service commander or officer in charge, when imposing nonjudicial punishment upon a military member of their command, will apply the provisions of this regulation (see para 3-8c, below).

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

(1) Only the Governor, The Adjutant General (TAG), or a general officer in command is authorized to delegate that commander's or commanding general's powers, under ACMJ, Art. 15, to a Principal Assistant. An officer in command who is frocked to the grade of brigadier general is not a general officer in command as defined in paragraph 1-1(17), Chapter 1, AMCM, 2013, and lacks the authority to impose some punishments, including forfeitures and arrest upon commissioned officers.

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

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

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

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

(c) Notification that the delegation has been terminated is made in writing. A delegation does not divest the delegating officer of the right to personally exercise the delegating officer's ACMJ, Art. 15 powers in any case in which the delegating officer desires to act. Although an appeal from punishment imposed under a delegation of ACMJ, Art. 15 powers will be acted on by the authority next superior to the delegating officer (see para 3-30, below); the latter may take the action described in paragraph 3-32, below. (See paras 3-9 (i) and (j), Ch. 3, AMCM, 2013, and para 3-38, below.)

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

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

a. Military personnel of a commander's command. Unless such authority is limited or withheld by superior competent authority, a commander may impose punishment under ACMJ, Art. 15 on military personnel within the command of the imposing commander.

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

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

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

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

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

(a) The phraseology used in the orders.

(b) Where the Service member 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 ACMJ, Art. 15.

b. Termination of status. Nonjudicial punishment will not be imposed on an individual by a commander after the individual ceases to be of the commander’s command, because of transfer or otherwise. However, the gaining commander may impose nonjudicial punishment under Art. 15 ACMJ, for those acts which occur during the time that the service member was assigned to the previous command. If ACMJ, Art. 15 proceedings have been instituted and punishment has not been imposed prior to the time of the change of assignment, the commander who instituted the proceedings may forward the record of proceedings to the gaining commander for appropriate disposition.

c. Personnel of other armed forces. An Army or Air Force 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 AFI 51–201, for Air Force personnel.) When members of different services in the ALNG engage in an incident that contravenes Art. 15 of the ACMJ, then TAG will determine whether to impose nonjudicial punishment or grant to a commander of either service member the authority to impose nonjudicial punishment upon both members (this is only triggered when the service members do not share the same commander but they were complicit in the commission of the offense).

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 3-2d, Ch. 3, AMCM, 2013). This is not a hard and fast rule; the circumstances of the offense might indicate that action under ACMJ, Art. 15 would be appropriate even in a case falling outside these categories. Violations of, or failures to obey, general orders or regulations may be minor offenses if the prohibited conduct itself is of a minor nature even though also prohibited by a general order or regulation. Whether an offense is “minor” is a matter within the discretion of the commander imposing nonjudicial punishment. Nonjudicial punishment for an offense other than a minor offense (even when thought by the commander to be minor) is not a bar to subsequent trial by court-martial for the same offense. See RCM 907 (b) (2) (D) (iv). However, the accused may show at trial that nonjudicial punishment was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence. See ACMJ, Art. 15(f) and RCM 1001(c) (1) (B).

3–10. Double punishment prohibited

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

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

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

3–12. Statute of limitations

Nonjudicial punishment may not be imposed for offenses which were committed more than 1 year before the date of imposition. Computation of this 1-year limitation is in accordance with the ACMJ, Arts. 43(c) and (d). The period of limitations does not run when the Service member 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. The Alabama Code of Military Justice will not be applicable to offenses committed prior to the implementation date of the ACMJ.

Section III

Procedure (para 3-7, Ch.3, A MCM, 2013)

3-13. General

The authority to impose nonjudicial punishment charges a commander with the responsibility of exercising the commander's authority in an absolutely fair and judicious manner (see para 3-1 and 3-5, Ch. 3, AMCM, 2013). (see para 3-1 & 3-5, Ch.3, AMCM, 2013).

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 Service member was involved.
- (3) The character and military record of the Service member.

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 Service member probably has committed an offense and that a nonjudicial punishment procedure is appropriate, the commander should (unless the case is to be referred to a superior commander (see para 3-5)) take action as set forth in this section.

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

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

3-16. Summarized proceeding

a. Preliminary inquiry.

(1) A commander, after a preliminary inquiry into an alleged offense by an enlisted Service member, may use summarized proceedings if it is determined that punishment should be found to be appropriate as set forth in para. 3-19 below.

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

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

- (1) The imposing commander's intention to initiate proceedings under ACMJ, Art. 15.
- (2) The fact that the imposing commander intends to use summarized proceedings and the maximum punishments that can be imposed under these proceedings.
- (3) The right to remain silent.
- (4) Offenses that the Service member allegedly has committed and the articles of the ACMJ allegedly violated.
- (5) The right to confront witnesses, examine evidence, and submit matters in defense, extenuation, and/or mitigation.
- (6) The right to appeal.

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

- (1) Accept the ACMJ, Art. 15 nonjudicial punishment.
- (2) Request a reasonable time, normally 2 weeks, however 48 hours may be a reasonable decision period if the service member is on orders, to gather matters in defense, extenuation, and/or mitigation. The Service member may consult with legally qualified counsel to the extent that qualified legal counsel is available. The commander may extend the time for the decision period.

d. Hearing. The imposing commander may proceed with the hearing (see para 3-18g (1)). The hearing will consist of the following:

- (1) Consideration of evidence, written or oral, against the Service member.
- (2) Examination of available evidence by the Service member.
- (3) Presentation by the Service member of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.

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

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

(6) Explanation of right to appeal.

e. Appeal. The decision to appeal will be recorded in block 4, AGO Form 2627–1. This will be done according to the procedures set forth in paragraph 3–32, below. The Service member will be given a reasonable time (normally no more than 45 calendar days, as the commander may determine) within which to submit an appeal (see para 3–29, below). The Service member may, pending submission and decision on the appeal, be required to undergo the punishment imposed, but once the appeal is submitted, such appeal will be promptly decided. Additional or the balance of punishment will not be executed until after final determination of the appeal.

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

3–17. Formal proceedings (para 3-8, Ch. 3, AMCM, 2013)

A commander who, after a preliminary inquiry, determines that there is sufficient cause and that the imposition of punishment is appropriate shall use the provisions as set forth in para 3-19 below. All entries will be recorded on AGO Form 2627. An illustrated example of a completed AGO Form 2627 is shown at figure 3–2, below.

3–18. Notification and explanation of rights

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

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

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

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

c. Right to counsel. The Service member will be informed of the right to consult with counsel and the location of counsel. For the purpose of this chapter, counsel means the following: a JA, a Department of Defense (DoD) 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 has the opportunity to work or consult with ALNGTDS, a staff or command judge advocate, or a civilian attorney at no cost to the government. For assignment and/or detail of ANG area defense counsel see ch. 6-3(g)(2) of this regulation.

d. Other rights. The Service member will be informed of the right to—

(1) Fully present the Service members case in the presence, except in rare circumstances, of the imposing commander (see para 3–18g).

(2) Call witnesses (see para 3-7c, Ch.3, AMCM, 2013).

(3) Present evidence.

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

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

(6) Examine available evidence, including but not limited to the investigation which led to the applicable charge.

e. Decision period.

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

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

(3) Whether court-martial charges will be preferred against the Service member for the remaining offense(s) and the level of court-martial selected will be resolved by the appropriate commander. A commander may dispose of minor offenses by non-punitive measures and pursue a court-martial for other serious offenses which arise from the same course of conduct or incident.

f. Hearing.

(1) In the presence of the commander, the Service member 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 Service member 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 Service member will be entitled to appear before the officer designated to conduct the hearing (see para 3-7e, Ch. 3, AMCM, 2013). Within the limitations of AR 27–26, JAs may attend Art. 15 proceedings and provide advice to clients. Advice should be provided during a recess in the proceedings. When defense counsel, military or civilian, act as spokespersons, they speak on behalf of the accused and do not serve in a representative capacity.

(2) Ordinarily, hearings are open. The ACMJ, Art. 15 proceedings are not adversary in nature. However, a Service member may request an open or closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed (see para 4c(1)(G), part V, MCM, 2012). An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business—that is, the commander's office. A closed hearing is one in which the commander decides that members of the public will not attend. The fact that a Service member 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.

g. Spokesperson. The person who may accompany the Service member to the Art. 15 proceeding and who speaks on the Service member's behalf need not be a lawyer. An offender has no right to legal counsel at the nonjudicial proceedings. The Service member may retain civilian counsel to act as the Service member'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. Neither 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 Service member nor spokesperson (including any attorney present on behalf of the Service member) may examine or cross-examine witnesses, unless permitted by the imposing commander. The Service member or spokesperson may, however, indicate to the imposing commander relevant issues or questions they wish to explore or ask.

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

i. 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.

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

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

l. Right to appeal. The appellate rights and procedures that are available to the Service member will be explained.

Section IV

Punishment (para 3-9 and 3-10, Ch. 3, A MCM, 2013)

3-19. Rules and limitations

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

b. Pursuant to the authority as set forth in AMCM, 2013, the following additional rules and limitations concerning the kinds and amounts of punishment authorized under the ACMJ, Art. 15 apply (see also table 3-1, below), punishments are limited at summarized proceedings regardless of rank to 6 days forfeiture of pay, 6 days extra duty, and one grade reduction if the grade from which demoted is within the promotion authority of the commander imposing the reduction:

(1) *Commanding officers:*

(a) Extra duties, including fatigue or other duties for 8 days which need not be consecutive.

(b) Restriction to certain specified limits with or without suspension from duty for 8 days which need not be consecutive.

(c) Oral reprimand or admonition.

(d) Withholding privileges for 6 consecutive months.

(e) The forfeiture of pay up to 8 days of pay.

(f) Reduction to the next inferior grade if the grade from which demoted is within the promotion authority of the commander imposing the reduction.

(2) *Field Grade commanding officer:*

(a) Extra duties, including fatigue or other duties for not more than 14 days which need not be consecutive.

(b) Oral reprimand or admonition.

(c) Withholding privileges for 6 consecutive months.

(d) The forfeiture of pay up to 12 days.

(e) A reduction to the lowest or any intermediate pay grade if the grade from which demoted is within the promotion authority of the commander imposing the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades.

(f) Restriction to certain specified limits with or without suspension from duty for 14 days which need not be consecutive.

(3) The Governor, TAG, or officer exercising GCMA or an officer of a general or flag rank in command may impose both of the following:

(a) Upon officers of the officer's command any punishment authorized in paragraphs (a) thru (d).

(b) Upon enlisted members of the officer's command any punishment authorized under paragraph (2) above.

(4) *Restriction.* Prior to the offer of nonjudicial punishment the commanding officer shall determine

whether restriction shall be considered as a punishment. Should the commanding officer determine that punishment option may include restriction; the accused shall be notified of the right to demand trial by court-martial. The commander intending to impose restriction must confer with the Staff Judge Advocate prior to notifying the service member that the commander intends to consider restriction as a punishment. Should the commanding officer determine that the punishment option will not include restriction the accused shall be notified that there is no right to trial by court-martial in lieu of nonjudicial punishment.

(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 Service member's position as a NCO or specialist (SPC) (AR 600-20).

(6) *Reduction in grade.*

(a) *Promotion authority.* The grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Art. 15(b) if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade (see AR 600-8-19). The AR 140-158 outlines promotion authority for reserve component (RC) Service members.

(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 Service member 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 Service member concerned will be entitled to pay as though the reduction had never been imposed.

(d) *Void reduction.* Any portion of a reduction under ACMJ, Art. 15 beyond the imposing commander's authority to reduce are void and must be set aside. Where a commander reduces a Service member 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 Service member 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 Service member was deprived by a reduction that has been set aside must be restored.

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

(7) *Forfeiture of pay.* (See figures 3-3 and 3-4 regarding calculations and definition of day for drill, annual training, and special orders).

(a) *Limitations.* The amount of forfeiture of pay will be rounded to the next lower whole dollar. Forfeitures imposed by a company grade commander may not be applied for more than eight (8) days, while those imposed by a field grade commander may not be applied for more than 12 days. For purposes of pay a day is equal to one active duty military pay day. (See table 3-1). If a forfeiture of pay has been imposed in addition to a suspended or unsuspended reduction in grade, the amount forfeited will be limited to the amount authorized for the reduced grade. The maximum forfeiture of pay to which a Service member is subject because of one or more actions under, Art. 15, is one-half of the Service member's pay for the period of service. The ACMJ, Art. 15 forfeitures will not (in conjunction with partial forfeitures adjudged by court-martial) deprive a Service member of more than two-thirds of the Service member's pay for the period of service (see DOD 7000.14-R).

(8) *Combination and apportionment.* Whenever any of those punishments are combined to run consecutively the total length of the combined punishment cannot exceed the authorized duration of the longest

punishment in the combination and there must be an apportionment of punishments so that no single punishment in the combination exceeds its authorized length under the ACMJ. With the following exception, punishment authorized under ACMJ, Art. 15(b) may be combined: Restriction and extra duty may be combined in any manner to run for a period not exceeding the maximum duration that can be imposed for extra duty, by the imposing commander. Restriction is further limited to formal Art. 15 proceedings, and requires TAG approval before imposing.

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

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

(b) *Forfeitures.* Forfeiture of pay should be entered on AGO Form 2627 per the following examples (see para 3-10h, Ch. 3, AMCM, 2013):

1. Example A, when the forfeiture is to be applied for not more than 4 days: "Forfeiture of \$ ____ for ____ days."

2. Example B, when the forfeiture is to be applied for more than 6 days: "Forfeiture of ____ for months."

(c) *Restriction and Extra Duty.* Specific duties to be performed during extra duty are not normally specified on either AGO Form 2627 or AGO Form 2627-1. Limits on restriction may be listed on either AGO Form 2627 or AGO Form 2627-1 but are not required. Examples follow:

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

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

(d) *Admonition and reprimand.* Admonitions or reprimands imposed by the Governor, TAG, GCMCA, or general or flag rank officer in command on commissioned officers must be in writing (see para 3-10a, Ch. 3 AMCM, 2013). Admonitions or reprimands imposed on enlisted Service members under formal proceedings may be administered orally or in writing. Written admonitions and reprimands imposed as a punitive measure under ACMJ, Art. 15 will be in memorandum format, per AR 25-50, and will be listed as an attachment in item 10, AGO Form 2627. Oral admonitions and reprimands will be identified as such in either item 6 AGO Form 2627, or item 2 on AGO Form 2627-1.

c. *Duty categories and status.* In conjunction with table 3-3 the following are types of National Guard duty categories for which the ACMJ applies and for when punishment may be imposed for violations of the ACMJ and/or any service regulation and policy: (see *DoDI 1215.06, February 7, 2007, Change 2, 12/24/2008*)

(1) *Active Duty for Training (ADT).* A category of AD that shall be used to provide structured individual and/or unit training, including on-the-job-training, or educational courses to RC members. Included in the ADT category are Annual Training (AT), initial ADT (IADT), and other training duty (OTD). Annual training is the minimum period of ADT that Reserve members must perform each year to satisfy the training requirements associated with their RCs assignment. Initial ADT includes basic military training and technical skill training required for all enlisted accessions. Other training Duty is authorized ADT, other than IADT or AT, that provides all other structured training, to include on the job training, for individuals or units to enhance proficiency, and it is authorized to provide for full-time attendance at organized and planned specialized skill training, refresher and proficiency training, and professional development education programs. It shall be used to support RC members in obtaining the necessary skills and disciplines to achieve required readiness standards.

(2) *Active Duty Other than for Training (ADOT)* is a category of active duty used to provide Reserve Component (RC) support RC missions and it includes *Active Duty for Operational Support (ADOS)* formerly known as Active Duty Special Work is an authorized voluntary tour of AD, other than AGR duty, performed pursuant to section 12301(d) and ADT performed at the request of an organizational or operational commander, or as a result of reimbursable funding. All ADOS is funded through applicable military or Reserve personnel appropriations (ADOS-RC funded) to support RC programs, respectively.

(3) *Active Guard Reserve (AGR) Duty* is performed by a member of an RC of the Army or Air Force, or *Full Time National Guard Duty (FTNGD)* performed by a member of the National Guard under an order to AD or FTNGD for a period of 180 consecutive days or more for organizing, administering, recruiting, instructing, or training the Reserve components, or to perform other duties as prescribed in sections 12310 and 10211 of Reference. FTNGD Training or other duty performed by a member of the ARNGUS or the ANGUS in a member's status as a member of the National Guard of a state pursuant to Title 32 United States Code (USC) sections 316, 502, 503, 504, or 505 of for which the member is entitled to pay from the United States, or for which the member has waived pay from the United States. FTNGD for Operational Support (FTNGD(OS)) is an authorized voluntary tour of FTNGD,

other than AGR duty, performed pursuant to 32 USC section 502(f)(2) for training performed at the request of an organizational or operational commander, or as a result of reimbursable funding. Authorization of FTNGD(OS) shall be managed pursuant to Directives established by the Secretaries of the Army and Air Force.

(4) *Inactive Duty Training* (IDT) is authorized training performed by members of an RC not on AD or FTNGD, and performed in connection with the prescribed activities of the RC, of which they are a member. It consists of regularly scheduled unit training periods, ATPs, and equivalent training as defined in this Instruction. Regularly scheduled IDT is 48 annual periods of IDT authorized for National Guard members pursuant to section 10147 of or section 502(a). Equivalent Training (ET) is a sub-category of IDT and is IDT performed instead of regularly scheduled IDT.

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

Maximum punishment	Imposed by company grade officers	Imposed by field grade officers	Imposed by field grade and general officers	Imposed by Governor, TAG, general/flag officers in command or GCMCA
For enlisted members¹-- Admonition/reprimand	Yes	Yes	Yes	Yes
AND Extra duties	8 days	14 days	14 days	14 days
AND Restriction	8 days	14 days	14 days	14 days
AND Reduction (E-1 through E-4) Reduction (E-5 through E-6)	one grade	one or 2 grades ³	one or 2 grades ³	one or 2 grades ³
AND Forfeiture ³	8 days	12 days pay	12 days pay	12 days pay
For commissioned officers— Admonition/reprimand	No	No	No	Yes
Restriction	No	No	No	14 days
AND Forfeiture	No	No	No	12 days pay
Computing authorized forfeitures of pay under ACMJ, Art. 15				
For forfeiture on enlisted Persons—	When forfeiture is imposed by major or above—	Use the formula—	(Monthly basic pay ^{2,5}) divided by 2—the maximum forfeiture per month.	The amount will be rounded to the next lower whole dollar.
For forfeiture on Commissioned officers—	When forfeiture is imposed by a captain or above—	Use the formula—	(Monthly basic pay ^{2,5}) x 7 divided by 30—the maximum forfeiture per month	The amount will be rounded to the next lower whole dollar.
	When forfeiture is imposed by GCM jurisdiction, or by a general/flag officer in command—Governor or TAG	Use the formula—	(Monthly basic pay ⁴) divided by 2—the maximum forfeiture per month	The amount will be rounded to the next lower whole dollar.
Notes:				
¹ The maximum punishment that can be imposed by any commander will not exceed extra duty for 14 days, restriction for 14 days, oral reprimand, or any combination thereof. Combinations of extra duties and restriction cannot exceed the maximum allowed for extra duty.				
² Amount of forfeiture is computed at the reduced grade, even if suspended, if reduction is part of the punishment imposed. For RC Service members, use monthly basic pay for the grade and time in service of an AA Service member (see para 20–9).				
³ Only if imposed by a field grade commander of a unit authorized a commander in the grade of O–5 or higher. In the RC, reduction is only authorized from grade E–5. For RC Service members of grade E–6 and higher, reduction is authorized only if the grade from which the Service member is reduced is within the promotion authority of the officer imposing the reduction.				
⁴ In the case of commissioned officers and warrant officers, admonitions and reprimands given as nonjudicial punishment must be administered in writing Art. 15 paragraph 5b(1), MCM 2008 (this is not included in 3-9, Ch. 3, AMCM, 2013 – referring to officers and WOs).				
⁵ At the time punishment is imposed				

Table 3-3 Types of Training Periods and Assemblies (NGR 350-1 Table 3-3, 4 Aug 2009)

Type	No. of Training Periods	Days Paid	Retirement Points	Remarks
UTA	1	1	1	One period of not less than 4 hours
MUTA-2	2	2	2	Two UTAs conducted on one day or on 2 consecutive days
MUTA-3	3	3	3	Three UTAs conducted on 2 or 3 consecutive days
MUTA-4	4	4	4	Four UTAs conducted on 2, 3, or 4 consecutive days
MUTA-5	5	5	5	Five UTAs conducted on 3, 4, or 5 consecutive days
MUTA-6	6	6	6	Six UTAs conducted on 3, 4, 5 or 6 consecutive days

3-20. Effect on promotable status

See AR 600-8-19 and AR 600-8-2.

3-21. Effective date and execution of punishment

a. General. The date of imposition of nonjudicial punishment is the date in items 4 and 5 on AGO Form 2627, or items 1 through 3 on AGO 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 Service member is hospitalized, placed on quarters, authorized emergency leave, while on a brief period of temporary duty (TDY) or a brief field problem, the execution of the punishment should begin immediately thereafter. Except as provided in paragraph 3-21c, below, should not exceed the period of service (however interrupted). Once the Service member has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 45 calendar days (3 days for summarized proceedings), or in the case of Army Reserve Service members that period which will encompass the next 5 days of Title 10 duty status for the appellate commander concerned, excluding the submission date. If the appeal is not decided within this period and if the Service member so requests, the performance of those punishments involving deprivation of liberty will be interrupted pending decision on the appeal. Punishments involving deprivation of liberty include restriction, extra duty.

c. Additional punishment. If a Service member to be punished is currently undergoing punishment under a prior ACMJ, Art. 15 or court-martial, an imposing commander may prescribe additional punishment as directed or wait until the conclusion of the earlier punishment to impose additional punishment.

d. Vacated suspended reduction. A suspended reduction, later vacated, is effective on the date the vacation is directed (see para 3-19b(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, above, and any other limitations imposed by a superior authority, order the punishment to be executed in such a manner and under such supervision as the commander may direct.

3-22. Announcement of punishment

The punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. After deleting the social security account number of the Service member and other relevant privacy information the results of the ACMJ, Art. 15 punishment may be posted on the unit bulletin board. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other Service members. 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 Service members 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 3-13, Ch. 3, A MCM, 2013)

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 AMCM—

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

b. *Meaning of “successor-in-command.”* As used in paragraph 3-13, Ch.3, AMCM, 2013, a successor-in-command is the officer who has authority to impose the same kind and amount of punishment on a Service member concerned that was initially imposed or was the result of a modification and who—

- (1) Commands the unit to which the punished Service member is currently assigned or attached (see para 3-8, above).
- (2) Is the commander succeeding to the command occupied by the imposing commander, provided the Service member 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 3-7c, above, to that successor and the Service member is still of that command.

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

d. The Governor may delegate clemency authority to TAG.

3-24. Suspension

Ordinarily, punishment is suspended to grant a probational period during which a Service member may show that the Service member deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of 8 months after the date imposed. Suspension of punishment may not be for a period longer than 6 months from the suspension date. In the case of summarized proceeding under paragraph 3-16, suspensions of punishment may not be for a period longer than 6 months from the date of suspension. Further misconduct by the Service member, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment (see para 3-25). Unless otherwise stated, an action suspending a punishment automatically includes a condition that the Service member not violate any punitive article of the ACMJ.

3-25. Vacation

a. A commander may vacate any suspended punishment (see para 3-13, Ch. 3, AMCM, 2013), provided the punishment is of the type and amount the commander could impose and where the commander has determined that the Service member has committed misconduct (amounting to an offense under the ACMJ) 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 Service member 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 ACMJ, Art. 15 nonjudicial punishment.

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

(1) If the suspended punishment is of the kind set forth in ACMJ, Arts. 15 (e)(1) through (7), the Service member 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 Service member should nevertheless ordinarily be given notice of the proposed vacation and the opportunity to respond.

(2) In cases involving punishments not set forth in ACMJ, Arts. 15(e) (1) through (7), the Service member 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 Service member is absent without leave at the time the commander proposes vacation and remains so, the commander, after 1 day or 2 MUTAs from the date the Service member is absent without leave or on the last day of the suspension period, whichever is earlier, may, at the commander's discretion, vacate the suspension without providing notice or any opportunity to respond.

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

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

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

(c) An explanation, if the Service member did not appear, in a case involving vacation of a suspended punishment listed in ACMJ, Arts. 15(e)(1) through (7) or in other cases, if the Service member 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, and the general nature of the punishment remains the same.

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

b. Appropriateness. Mitigation is appropriate when—

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

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

c. Limitation on mitigation.

(1) With the exception of reduction in grade, the power to mitigate exists only with respect to a punishment or portion thereof that is unexecuted. A reduction in grade may be mitigated to forfeiture of pay even though it has been executed.

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

3-27. Remission

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

3-28. Setting aside and restoration

a. This is an action whereby the punishment or any part or amount, whether executed or unexecuted, is

set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. Nonjudicial punishment is “wholly set aside” when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under ACMJ, Art. 15. In addition, the imposing commander or successor in command may set aside some or all of the findings in a particular case. If all findings are set aside, then the ACMJ, Art. 15 itself is set aside and removed from the Service member’s records. The basis for any set-aside action is a determination that, under all the circumstances of the case, the imposition of the ACMJ, Art. 15 or punishment has resulted in a clear injustice. “Clear injustice” means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Service member. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Service member. Clear injustice does not include the fact that the Service member’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 Service member.

b. Normally, the Service member’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 AGO Form 2627 or AGO 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 8 months after the punishment has been executed. When the commander sets aside any portion of the punishment, the commander will record the basis for this action on AGO Form 2627–2 (see para 3–38*b*, below). When a commander sets aside any portion of the punishment after 8 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 3-14, Ch. 3, AMCM 2013)

3–29. General

a. Only one appeal is permissible under ACMJ, Art. 15 proceedings. Provisions for other administrative relief measures are contained in paragraph 3–43. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than 45 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 Service member indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 45-day period. Although a suspended punishment may be appealed, no appeal is authorized from the vacation of suspended punishment.

3–30. Who may act on an appeal

a. The next superior authority to the commanding officer who imposed the ACMJ, Art. 15 punishment will act on an appeal if the Service member 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 Service member is no longer of the imposing commander’s command, the authority next superior to the commander of the imposing command (who can impose the same kind and amount of punishment as that imposed or resulting from subsequent modifications) will act on the appeal.

b. The authority “next superior” to an imposing commander is normally the next superior in the chain-of-command, or such other authority as may be designated by competent authority as being next superior for the purposes of ACMJ, Art. 15. A superior authority who exercises GCM jurisdiction, or is a general or flag officer in command, may delegate those powers the superior authority has as superior authority under ACMJ, Art. 15(e), to a commissioned officer of the superior authority’s command subject to the limitations in paragraph 3–7*c*, above.

c. When forwarding an ACMJ, Art. 15 record of punishment to ALNG-SJA 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 ACMJ, Art. 15 report should be any evidence considered by the imposing commander. If the appeal raises any new matters, they should be addressed by the commander in the forwarding documentation.

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

e. When a commander of another Service imposes nonjudicial punishment pursuant to ACMJ upon a Service member, the authority's next superior need not be an Army officer.

3-31. Procedure for submitting an appeal

All appeals will be made on AGO Form 2627 or AGO 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 Service member may attach documents to the appeal for consideration. A Service member is not required to state reasons for the Service member's appeal; however, the Service member may do so. For example, the person may state the following in the appeal:

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

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

The imposing commander or the successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (see para 3-13, Ch. 3, AMCM, 2013, and see para 3-33, below). If the imposing commander or a successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be recorded on item 8 of AGO Form 2627, or item 5 of AGO 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 Service member. When the Service member desires to appeal, the imposing commander, or the successor-in-command, will make available to the Service member reasonable assistance in preparing the appeal and will promptly forward the appeal to the appropriate superior authority.

3-33. Action by the superior authority

Action by the superior authority on appeal will be entered in item 8 on AGO Form 2627, or item 5 on AGO Form 2627-1. A superior authority will act on the appeal expeditiously. Once the Service member has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 30 calendar days. 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, AGO Form 2627). In acting on an appeal, the superior authority may exercise the same powers as may be exercised by the imposing commander or the imposing commander's successor-in-command. A timely appeal does not terminate merely because a Service member is discharged from the Service. It will be processed to completion by the superior authority.

3-34. Action by a judge advocate

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

- (1) The appropriateness of the punishment.
- (2) Whether the proceedings were conducted under law and regulations.

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

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

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

3-35. Action by superior authority regardless of appeal

Any superior authority may exercise the same powers, as may be exercised by the imposing commander, or the imposing commander's successor-in-command, whether or not an appeal has been made from the punishment (see para 3-4i, Ch. 3, AMCM, 2013). "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 Service member has no right to petition for relief under this paragraph and any petition so made may be summarily denied by the superior authority to which it is addressed.

Section VII

Records of Punishment, AGO Form 2627 (para 3-15, Ch. 3, AMCM 2013)

3-36. Records of punishment

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

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

a. The original AGO Form 2627 will include as allied documents all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal (see g, below). Photocopies of AGO Form 2627 will be transmitted through the Service member's military personnel division (MPD) or the personnel service company (PSC) to the finance and accounting office (FAO) maintaining the Service member's pay account. The DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) will be submitted per AR 600-8-2. Standard instructions for distribution and filing of forms for commissioned officers and enlisted Service members serving on active duty are set out below.

b. Original of AGO Form 2627.

(1) *Place of filing.* For Service members who are at the rank of specialist (SPC) or CPL and below (prior to punishment) the original will be filed locally in unit nonjudicial punishment or unit personnel files. Such locally filed originals will be destroyed at the end of 2 years from the date of imposition of punishment or on the Service member's transfer to another GCMCA, whichever occurs first. For these Service members, the imposing commander should annotate item 4b of AGO Form 2627 as "not applicable (N/A)." When the transfer of a Service member to a new GCM jurisdiction is for the purpose of receiving medical treatment, or TDY or deployment, the Art. 15, ACMJ form will accompany the Service member to the new GCM, and back to the imposing GCM if the Service member returns to that imposing GCM jurisdiction following the medical treatment, TDY, or deployment. The 2-year rule will apply in these situations.

(a) For all other Service members, the original will be sent to the appropriate custodian listed in (2), below, for filing in the OMPF. The decision to file the original AGO Form 2627 on the performance section or the restricted section in the OMPF will be made by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is subject to review by any superior authority. However, the superior authority cannot direct that an ACMJ, Art. 15 report be filed in the performance section that the imposing commander directed to be filed in the restricted section. The imposing commander's filing decision will be indicated in item 4b of AGO Form 2627. A change in the filing decision should be recorded in block 8 of AGO Form 2627. When a commander or any superior authority makes a decision regarding the filing, the commander should consider the following:

1. The performance section 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 section 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 section will be redirected to the performance section if the Service member has other records of nonjudicial punishment reflecting misconduct in the grade of SGT or higher that have not been wholly set aside and recorded in the restricted section (see para 3-6, above.)

(c) Where the OMPF is electronic, the “restricted section” and the “performance section” in (b), above, are the restricted section and the performance section of Personnel Electronic Records Management System.

(2) *Mailing addresses.* The original AGO Form 2627 will be transmitted by the MPD or PSC to one of the following:

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

(b) For ARNG enlisted Service members, choose the State Adjutant General of: the Service member’s State, the Commonwealth of Puerto Rico, the Virgin Islands, or the District of Columbia.

c. *Unit copy.*

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

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

d. *Finance copy.* A photocopy of the completed AGO Form 2627 will be forwarded to the Service member’s servicing FAO if the punishment includes an unsuspended reduction and/or forfeiture of pay.

e. *Personnel service copy.* If the punishment includes only a reduction, a photocopy will be forwarded to the Service member’s MPD or PSC.

f. *Service member’s copy.* Give a photocopy of the completed action with allied documents to the Service member who was punished.

g. *Allied documents.* Allied documents will be transmitted for administrative convenience with the original AGO Form 2627 for filing in the restricted section of the OMPF (see para 3–44, below).

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

3–38. Supplementary action

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

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

c. *Distribution and filing.*

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

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

(3) *The personnel and finance copies.* If the action affects a reduction, a photocopy of the supplementary action and a photocopy of the initial AGO Form 2627, if maintained by the unit (see para 3–37c, above) will be forwarded to the MPD or PSC. If the action affects forfeiture, a photocopy will be forwarded to the FAO maintaining the Service member’s pay account.

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

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

3-39. Reconciliation log

Imposing commanders, assisted by their supporting paralegal specialist, will ensure that punishments imposed under the provisions of ACMJ, Art. 15 are executed. Execution of punishments of reduction and forfeiture of pay will be verified and documented by the mandatory use of the Reconciliation Log, AGO Form 5110 (Article 15-Reconciliation Log), showing the punishment, dates verified, and initials of verifying paralegal specialist. To properly use AGO Form 5110, all ACMJ, Art. 15 records (AGO Form 2627) made by the unit paralegal specialist must be sequentially numbered and the required data entered in the AGO Form 5110. Unit paralegal specialists will use the unit commander's financial report, the Service member's leave and earnings statement, or the daily record of financial transactions to verify execution of forfeitures and reductions. The chief paralegal NCO for the GCMCA or a designee will inspect, at least annually, the execution of ACMJ, Art. 15 forfeitures and reductions by review of AGO Form 5110, including random verification using finance records. The chief legal NCO or designee at the GCM level, on a quarterly basis, will transmit to the custodian of the OMPF the name, social security number, and the date the nonjudicial punishment was imposed. After information is verified on the AGO Form 5110, supporting finance documentation showing execution of the reduction or forfeitures, as well as the verification of OMPF filings by the OMPF custodian will be retained for 2 years after the date the punishment was imposed.

3-40. Time for distribution of initial AGO Form 2627

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

3-41. Transfers of punishments wholly set aside, or changes of status

Any punishments imposed under Art. 15 ACMJ will be wholly set aside upon promotion to WO1 or O-1 or higher rank.

3-42. Transfer or removal of records of nonjudicial punishment

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

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

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

b. Policies.

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

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

(3) The request must be in writing and should include the Service member’s current unit mailing address and duty telephone number. No person is authorized to appear in person before the Department Army Suitability Evaluation Board (DASEB).

(4) The officer who directed the filing of the record in the OMPF (of enlisted Service members, SGT and above, and commissioned officers) may provide a statement to the Service member in support of a request for transfer of the record from the performance to the restricted section. Other evidence submitted in support of a request should not include copies of documents already recorded in the Service member’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, G–1 (DCS, G–1) or the DCS, G–1’s delegate. Requesters will be notified in writing of the determination. Letters of denial will be placed upon the performance section of the Service member concerned. Other related documentation and evidence will be placed upon the restricted section.

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

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

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

c. Processing requests.

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

(2) *Reserve component personnel.*

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

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

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

e. *Correction of military records.* 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.

3-43. Use of records

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

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

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

4-1. General

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

4-2. Policy

A person subject to the ACMJ who has been tried in a civilian court may, but ordinarily will not, be tried by court-martial or punished under ACMJ, Art. 15, for the same act over which the civilian court has exercised jurisdiction. Generally, an Art. 15 under ACMJ may be imposed for conduct arising from a transaction or series of transactions for which the service member may have been punished by a civilian court. For instance, a service member who is convicted of DUI by a civilian court should ordinarily not be given an Art. 15 under the ACMJ for DUI. However, the commander may choose to impose punishment for other actions which arise from the DUI, such as dereliction of duty, fraternization, and or any such offense that are uniquely military and which are not adequately taken into consideration by the civilian court.

Chapter 5

Procedures for Courts-Martial

Section I

General

5-1. Scope This chapter implements certain provisions of the RCM and provides other procedures related to courts-martial.

5-2. Courts-martial jurisdiction

a. Authority to convene courts.

(1) A commander may convene a court-martial in accordance with ACMJ, Art. 21, unless the authority to convene Courts martial's is withheld by the next superior commander or TAG.

Section II

Court-Martial Personnel

5-3. Detail of trial counsel

a. Detail of trial counsel is a ministerial function to be exercised by the SJA or that officer's designee.

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

5-4. Certification and use of lawyers

a. Commissioned officers, who are not members of the Army Judge Advocate General's Corps (JAGC), but who possess legal qualifications in the sense stated in UCMJ, Art. 27(b) (1) may be certified for duty as counsel by Senior Force Judge Advocate.

5-5. Qualified counsel at courts-martial

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

b. The Regional Defense Counsel or his designee (AL Senior Defense Counsel) shall detail Trial Defense counsel.

c. For assignment or detail of ANG area defense counsel see ch. 6-3(g) (2).

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 ACMJ, Art. 32 by—

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

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

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

(4) ANG area defense counsel see Ch. 6-3(g) (2).

b. Persons not reasonably available.

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

- (a) A general or flag officer;
- (b) A trial or appellate military judge;
- (c) A trial counsel;
- (d) An appellate defense or Government counsel;
- (e) A principal legal advisor to a command, organization, or agency and, when such command, organization, or agency has GCM jurisdiction, the principal assistant of such an advisor;
- (f) An instructor or student at a service school or academy;
- (g) A student at a college or university;
- (h) See AR 27-10, paragraph 5-7 c, for more details.

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

- (1) The requested counsel's duty position, responsibilities, and workload.
- (2) Any ethical considerations that might prohibit or limit the participation of the requested counsel.
- (3) Time and distance factors, that is, travel to and from the sites, the anticipated date, and length of the trial or hearing.
- (4) The effect of the requested counsel's absence on the proper representation of the requested counsel's other clients.
- (5) The number of counsel assigned as trial or assistant trial counsel to the ACMJ, Art. 32, 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.

d. 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.

e. Procedure.

(1) Request for an individual military counsel should be made by the accused or the detailed defense counsel through the trial counsel to the convening authority. If the requested person is among those not reasonably available under subsection (b)(1) of RCM 506 or under regulations of the Secretary concerned, the convening authority will deny the request and notify the accused, unless the accused asserts that there is an existing attorney-client relationship regarding a charge in question or that the person requested will not, at the time of the trial or investigation for which requested, be among those so listed as not reasonably available. See AR 27-10 for more detailed procedures.

f. Control and support of individual military counsel.

- (1) Control and support of all USATDS counsel are governed by chapter 6 of this regulation.
- (2) The ALNGTDS will provide non-TDS individual military counsel all the support normally given to TDS counsel.
- (3) On appointment as individual military counsel, non-USATDS counsel will notify the regional defense counsel (RDC) for the area in which the court-martial proceedings are to take place.
- (4) For ANG area defense counsel see Ch. 6-3(g)(2).

5–8. Professional standards

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

b. The “Code of Judicial Conduct for Army Trial and Appellate Judges,” dated 5 May 2003 (available on jagcnet), is applicable to all trial and appellate military judges and military magistrates.

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 ACMJ, the AMCM, directives, regulations, the “Code of Judicial Conduct for Army Trial and Appellate Judges,” or other rules governing provision of legal services in the ALNG.

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 American

Bar Association (ABA) and the States) for guidance in interpreting these standards and resolving issues of professional responsibility.

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

a. Court members and counsel.

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

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

b. Military judges. The military judge will not be rated by the convening authority, or any member of the convening authority's staff.

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 (see subparagraphs (1) through (3), below). Before the trial of the first case by a court, the SJA for the Court-martial Convening Authority (CMCA) 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 for the CMCA, those members who may become president because of challenges or other reasons, are familiar with Appendix 8, MCM, 2012.

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

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

b. The DA Pam 27-7 should be used by the SCM officer during trial (see also app. 9, MCM, 2012). In special courts-martial the procedural guide in Appendix 8, MCM, 2012, should be used in both open and closed Article 39(a) session (e.g., a hearing on motions raising defenses or objections prior to trial).

c. Court members detailed to a functioning court may never be oriented or instructed on their immediate responsibilities in court-martial proceedings except by the military judge or other proper authority.

5-11. Reporters

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

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

5-12. Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before Article 32 investigations

a. Trial Counsel under the supervision of their MACOM SJA will prepare a budget estimate for their Commander who requests the convening of a court-martial. The budget must take into account the expenditures for any non-military witnesses and/or evidence. Any budget developed by trial counsel must also take into account any expenditures necessary for any non-military witnesses and/or evidence for which defense counsel may seek.

b. Trial Counsel or Defense Counsel will not subpoena witnesses or evidence unless the convening authority has approved the request.

c. A civilian witness determined to be reasonably available under RCM 405(g) and requested to testify before a ACMJ, Art. 32 investigation, is authorized transportation expenses and allowances.

d. Civilian witnesses will not be requested to appear before an ACMJ, Art. 32 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. Preparation of charge sheet

a. The RCM 307 and AGO Form 458 (Charge Sheet), provide instructions in the preparation of charges and specifications. (The AGO Form 458 is approved for electronic generation; see the app 4, AMCM, 2013, for an example of a properly prepared charge sheet.) Available data as to service, social security number, and similar items required to complete the first page of the charge sheet will be included. The original will be forwarded (see para 5-17) and signed. If several accused are charged on one charge sheet with the commission of a joint offense (see RCM 307(c)(5)), the complete personal data for each accused will appear on the first page of the charge sheet or on an attached copy. An extra signed copy of the charge sheet will be prepared for each additional accused.

b. After any charge is preferred, the AGO Form 458 will automatically act to suspend all favorable personnel actions, including discharge, promotion, and reenlistment. Filing of a DA Form 268 (Report to Suspend Favorable Personnel Action), and other related personnel actions are still required. Failure to file DA Form 268, does not affect the suspension accomplished by the AGO Form 458, or give rise to any rights to the Service member (see AR 600-8-2). After preferral of a charge, regardless of any action purporting to discharge or separate a Service member, any issuance of a discharge certificate is void until the charge is dismissed, the Service member is acquitted at trial by court-martial, or appellate review of a conviction is complete. Moreover, if a court-martial has adjudged an unsuspended punitive discharge, any issuance of a nonpunitive discharge certificate is void unless the GCMCA or an appellate court has disapproved the adjudged punitive discharge.

5-14. Forwarding of charges

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

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

c. Before referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority before whom the charge(s) is/are pending for resolution. Pretrial delay should not be granted ex parte; when practicable, the decision granting delay together with supporting reasons and the dates covering the delay should be reduced to writing. Before referral, the convening authority who has the charges may delegate the authority to grant delays to an ACMJ, Art. 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.

5-15. Convening authority actions upon receipt of approved resignation for the good of the service in lieu of court-martial

The convening authority will determine whether or not to accept resignation in lieu of courts-martial and withdrawal of federal recognition. The convening authority may grant the resignation in lieu of courts-martial and withdrawal of federal recognition, the convening authority may grant the request resignation in lieu of discharge even after the findings are announced by the court if accepting the resignation in lieu of is a less harsh penalty than that adjudged by the court martial. (AR 135-175 and AR 635-101)

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, but may be withheld by the next superior commander. 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 (under RCM 601(e)).

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 (see RCM 602, Discussion).

5-18. Preliminary procedures

a. Docketing and calendar management.

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

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

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

(c) Furnish a copy of the charges and specifications to the military judge with docketing responsibility for the convening authority's military unit by the next duty day. Charges should normally be transmitted by facsimile or electronically.

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

(3) Docketing procedures may include—

(a) Requesting mutually agreeable dates from counsel.

(b) Conferences under RCM 802.

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

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

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

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

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

(a) Anticipated pleas.

(b) Estimated duration of proceedings.

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

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

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

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

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

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

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

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

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

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

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

5–19. Witness attendance

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

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

c. Testimony by remote means. Witnesses may testify by remote means at any time with the consent of both parties, or over a party's objection on interlocutory questions if the practical difficulties of producing the witness outweigh the significance of the witness's personal appearance (although such testimony will not be admissible over the accused's objection as evidence on the ultimate issue of guilt). The RCM 703(b)(1) lists the factors military judges are to consider when making this determination.

Section IV Trial

5–20. Procedure for summary courts-martial

a. The DA Pam 27–7 and appendix H, AMCM, 2013, will serve as guides for SCM procedure (see also DA Pam 27–9), but nothing contained therein will give an accused any greater protection than that required by military due process.

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

(1) The accused's rights and options.

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

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

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

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

5–21. Arraignment and pleas

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

5–22. 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, the defense may request the military judge to conduct an inquiry to determine the relevant facts and rule

whether the restraint was tantamount to confinement.

5-23. Entry of findings of guilty pursuant to a plea

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

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

c. The military judge or president of a SPCM without a military judge will put the finding of guilty in proper form following the forms indicated in Appendix 10, AMCM, 2013, and the instructions contained in RCM 918.

5-24. Personal identifiers of witnesses

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

5-25. Special courts-martial guidance

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

b. The servicing staff judge advocate will prepare a pretrial advice, following generally the format of RCM 406(b).

c. Unless the convening authority causes restrictive language to be added to the "instructions" portion of block 14, DD Form 458, all SPCM referrals that meet the three requirements in subsection *a*, above, are empowered to adjudge a bad-conduct discharge. There is no requirement to annotate on block 14 of DD Form 458 that the court is empowered to adjudge a bad-conduct discharge.

5-26. Sentencing

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

- (1) The Enlisted Record Brief or Officer Record Brief.
- (2) Promotion, assignment, and qualification orders, if material.
- (3) Award orders and other citations and commendations.
- (4) Except for summarized records of proceedings under ACMJ, Art. 15 (AGO Form 2627-1), records of punishment under ACMJ, Art. 15, from any file in which the record is properly maintained by regulation.
- (5) Written reprimands or admonitions required by regulation to be maintained in the OMPF or Career Management Information File (CMIF) of the accused.
- (6) Reductions for inefficiency or misconduct.
- (7) Bars to reenlistment.
- (8) Evidence of civilian convictions entered in official military files.
- (9) Officer and enlisted evaluation reports.
- (10) Records relating to discipline and adjustment boards and other disciplinary records filed in corrections files in accordance with AR 190-47.

b. These personnel records include local nonjudicial punishment files, personnel records contained in the OMPF or located elsewhere, including but not limited to the CMIF and the correctional file, unless prohibited by law or other regulation. (See AR 600-8-104, which discusses personnel files, and AR 190-47, which discusses

corrections files.) Such records may not, however, include AGO Form 2627-1.

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

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

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

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

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

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

Section V

Post-trial

5-27. Report of result of trial

a. Under RCMs 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 AGO Form 4430 (State Military Department Report of Result of Trial). A copy of the AGO Form 4430 will be included in allied papers accompanying the record of trial.

5-28. Convening authority action

a. The convening authority will approve or disapprove the findings of the courts-martial; the Senior Force JA will transmit to the MACOM SJA the actions taken by the convening authority.

5-29. Suspension of sentence

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

(1) Three months for an SCM.

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

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

5-30. Vacation of suspended sentences

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

(1) See RCM 1109(d). The DD Form 455 (Report of Proceedings to Vacate Suspension of a General Court-Martial or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under ACMJ, Art. 72, and the RCM 1109) (see app 18, AMCM, 2013) 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.

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

5-31. Disposition of recommendations and reviews after bad-conduct discharges approved

The original recommendation of the SJA or legal officer and the original of any subsequent review by a JA or legal officer will be attached to the record of trial. In addition, one copy will be attached to each copy of the record of trial.

5-32. Clemency under Article 74

a. TAG, is empowered by ACMJ, Art. 74(a) to remit or suspend any part or amount of the unexecuted part of any court-martial sentence, other than a sentence approved by the Governor; and by ACMJ, Art. 74(b) for good cause, to substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

b. *Except* as noted below, TAG may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a court-martial sentence prior to completion of appellate review. TAG may not mitigate, remit, or

suspend a sentence affecting a general officer after that sentence is ordered to be executed. The unexecuted portion of a court-martial sentence includes discharges or dismissals not yet ordered into execution; unserved confinement, or restriction; and uncollected forfeitures. Appellate review is complete upon promulgation of an order directing execution of the sentence in its entirety.

5-33. Petition for new trial under Article 73

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

Section VI

Records of Trial

5-34. Preparation

a. Records of trial will be prepared as prescribed in RCM 1103 and RCM 1305.

b. Prepare AGO Form 490 (Record of Trial) and DD Form 491 (Summarized Record of Trial, Chronology Sheets). See also Appendix 14, AMCM, 2013. The computation of elapsed days on the chronology sheets must be uniformly calculated.

(1) Staff judge advocates will indicate the number of days from the initiation of the investigation of the most serious arraigned offense to the date of arraignment in the remarks section of the AGO Forms 490 and 491. No delays will be deducted, but an explanation for significant delays, such as additional offenses, sanity board, and so forth, may be discussed in the remarks section.

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

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

d. In GCM and SPCM cases in which a summarized record of trial is authorized (see RCM 1103(b)(2)), DD Form 491 will be used to prepare the summarized report (see app 13, AMCM, 2013). If a reporter was detailed and actually served in that capacity throughout the trial, the convening or higher authority may direct that the proceedings be reported verbatim as prescribed by RCM 1103(b)(2)(B) and 1103(c)(1) and as indicated in Appendix 14, AMCM, 2013.

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

f. In SCM cases, preparation of AGO Form 2329 (Record of Trial by Summary Court-Martial), (see app 15, AMCM, 2013 also will include the following:

(1) In the left hand column of item 8, insert each article of the ACMJ alleged to have been violated and include a summary of each specification in the format outlined in Appendix 17, AMCM, 2013.

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

ACMJ, Art. 64(a) and RCM 1112 and is legally sufficient.”

(3) In those cases where review is completed under RCM 1112(f) or RCM 1201(b) (2), item 8 or item 13, as noted in (2) above, will be annotated with the result of the completed review. The original charge sheet (AGO 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 5–46b, of this regulation before disposition under paragraph 5–47a, of this regulation.

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

5–35. Readability of records of trial

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

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

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

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

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

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

5–36. 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.

5–37. Authentication of records of trial

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

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

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

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

5–38. Service of record of trial on the accused

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

b. Copies of the judge advocate’s review under RCM 1112 shall be attached to the original and all copies of the record of trial. After the officer exercising general court-martial jurisdiction has taken final action, the accused shall be notified of the action and the accused shall be provided with a copy of the judge advocate’s

review. A certificate of service, attached to the record of trial, would be appropriate when the accused is served personally; otherwise receipt of service is required.

5-39. Disposition of records of trial

a. On completion of review and any required supplemental action, records of trial for SCMs and SPCMs that do not involve approved BCDs or confinement of more than 364 days will be filed in accordance with AR 25-400-2 (record numbers 27-10a 1 and 2, and 27-10c 1 and 2, respectively). Refer to the Army Records Information Management System records retention schedule located at <https://www.arims.army.mil/rfsanew/rssrch.asp> to determine the proper disposition of SCM and SPCM records of trial.

5-40. Transmittal of records of trial

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

5-41. Delegation of authority to modify procedures

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

Chapter 6

Alabama Army Trial Defense Service

6-1. General

This chapter governs the operations of the Alabama Trial Defense Service (ALTDS). It sets forth information, policies, and procedures applicable to the provision of defense counsel services throughout the Alabama National Guard. The Chief, United States Army Trial Defense Service USATDS, promulgates policies and procedures for the Trial Defense Service (TDS) that are incorporated by reference into AR 27-10. The Regional Defense Counsel for South-East Region coordinating with the AL Senior Defense Counsel for ALTDS promulgates policies and procedures for the Alabama Trial Defense Service (ALTDS) that are incorporated by reference into SMDR 27-10.

6-2. Mission

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

6-3. Organization

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

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

component.

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

c. Regional defense counsel.

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

(a) Responsible for the performance of the USATDS mission within a region.

(b) The supervisor of all senior defense counsel within the region.

(2) The RDC—

(a) Provides training in military justice, trial tactics, and professional responsibility as directed by the Chief, USATDS.

(b) Maintains continuing liaison with SJAs, military judges, commanders, and convening authorities.

(c) Makes periodic visits to all field and branch offices within the region.

(d) As authorized by the Chief, USATDS, details defense counsel (see para 6–9, below).

(e) Recommends replacements for departing USATDS counsel.

(3) The RDC may designate a Deputy RDC, who may also be the Senior Defense Counsel within the same TDS region the RDC is assigned. The RDC determines the duty and responsibilities of the Deputy RDC as needed.

f. Senior defense counsel – Alabama.

(1) A senior defense counsel is a JA certified under UCMJ, Art. 27(b), who is responsible for the performance of the USATDS mission within the area serviced by a field office. The senior defense counsel is the direct supervisor of all trial defense counsel within a field office. This includes those serving in subordinate branch offices.

(2) The senior defense counsel—

(a) As authorized by the Chief, USATDS and the regional defense counsel, details defense counsel (see para 6–9, below).

(b) Provides technical advice to trial defense counsel.

(c) Acts as the primary ALTDS liaison with ALNG SJAs, commanders, and convening authorities of organizations served by the field office.

(d) Represents Service members in courts-martial, administrative boards, and other proceedings.

(e) Acts as consulting counsel prescribed by the Chief, USATDS.

g. Trial defense counsel. A trial defense counsel is a JA, certified under UCMJ, Art. 27(b), and currently assigned, attached, or detailed to the U.S. Army Legal Services Agency and the U.S. Army Trial Defense Service, whose primary duties are to represent Service members in courts-martial, administrative boards, and other proceedings and act as consulting counsel as required by law or regulations. Trial defense counsel performs other defense-related duties as prescribed by the Chief, USATDS.

(1) *Alabama Army National Guard Trial Defense Service (ALTDS).* Defense counsel designated and approved by the Regional Defense Counsel, detailed pursuant to the above. Alabama Trial defense counsel performs their primary duties as prescribed herein and pursuant to Memorandum of Agreement with Joint Forces Headquarters – Montgomery, Alabama State Military Department.

(2) *Alabama Air National Guard Area Defense Counsel.* Defense counsel designated for ANG officers and airmen will be assigned ANG JA's outside their chain of command when available. If an ANG JA (or AF JA) may not be available to represent an ANG officer or airman, defense counsel will be coordinated through JFHQ-OSJA and ANG-SJA for the request and detailing of Army ALTDS.

6–4. Administrative and logistical support

Commanders of installations or organizations and their respective SJAs or the supporting legal office selected as duty stations for ALTDS counsel will provide administrative and logistical support for ALTDS personnel and document such support on organizational TDA or MTOE documents whenever possible. Specifically, the respective SJA is still responsible for administrative and logistical support of counsel assigned to a sustainment brigade regardless of the lack of command relationship between the sustainment brigade and the division or corps that those counsel and the SJA support. This support, specified by TJAG as essential to the performance of the defense mission, includes but is not limited to—

a. Processing of financial records, preparation of pay vouchers, and payment of all USATDS

personnel.

b. Processing of military personnel records, officer record briefs, officer qualification records, leave records, and similar personnel requirements. The Chief, USATDS sets leave policies and approval authority for personnel assigned or attached to TDS.

c. The USATDS headquarters (HQ) staff or designee will be responsible for preparing TDY or other appropriate orders of defense counsel and its support personnel.

d. Officer evaluation reports will be processed through the appropriate channels outside the ALNG chain of command and may include AL Senior Defense Counsel, Regional Defense Counsel, NGB TDS Commander, and Commander JAG School.

e. Army transportation needed to perform the defense mission, at least to the same degree as is provided to regularly assigned officers of similar grade and responsibility. Government owned vehicles will be provided whenever possible when needed to support the defense mission.

f. Private office space, office furniture, equipment, supplies, class A telephone service, , 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). (National Guard Bureau Trial Defense services may provide supplemental logistical support when available, and/or as requested).

g. *Experienced* and skilled enlisted clerical and support personnel (when available).

(1) Such personnel will perform duties under the direct supervision of the senior defense counsel (SDC). Defense paralegals and support personnel will not be assigned legal duties within the local legal office without coordination with the SDC. Defense paralegals shall be rated and/or senior rated by TDS personnel whenever feasible. When preparing evaluation reports for defense paralegals and support personnel, the senior paralegal NCO for the servicing Office of the Staff Judge Advocate (OSJA) or designated senior paralegal NCO will be consulted to ensure proper procedures and techniques are followed.

(2) Despite the manpower source from which they are derived (such as USALSA, sustainment brigades, defense Legal Services Organizations, and the OSJA), the primary duty of defense paralegals is TDS support. Accordingly, in the absence of coordination with the SDC and approval of the chief paralegal NCO and/or paralegal sergeant major assigned to the servicing GCMCA, defense paralegals will not perform duties incompatible with their primary mission. Service members performing duty as defense paralegals and support personnel will wear the TDS shoulder sleeve insignia and be assigned to a USATDS office for a minimum of 1 year, if practicable, in order to provide a stable defense work environment (see AR 27–1 and AR 570–4). Movement of legal personnel supporting a TDS office before serving in that capacity for 1 year will be coordinated with the RDC for the particular region concerned. Like TDS counsel, defense paralegal personnel will be offered training opportunities to be proficient as defense paralegals.

h. The adequacy of support provided by host installations will be a subject of special interest to TJAG in making statutory visits under UCMJ, Art. 6.

6–5. Funding responsibilities

a. Convening authorities will continue to fund all other authorized costs related to judicial and administrative proceedings including, but not limited to, the following:

(1) Travel and per diem costs for ALTDS counsel and support personnel when such travel is necessitated by a permanent change of location for the accused or a change in the location of the proceedings after referral of charges.

(2) Travel and per diem costs for ALTDS counsel and support personnel to attend depositions requested by the Government or ordered by a military judge.

(3) The appearance of individual military counsel not currently assigned to ALTDS, travel and per diem costs are covered by the requesting state.

(4) All other investigative expenses properly authorized by a convening authority or military judge.

(5) The attendance of lay witnesses.

(6) When U.S. Government experts are not members of the defense team, but travel to testify as a witness at a trial, an ACMJ, Art. 32 hearing, or other pretrial hearing, whether called by the defense or Government, the travel and per diem expenses will be paid by the convening authority.

(7) Employment of civilian experts. When the convening authority hires non-U.S. Government-employed experts for the defense, the convening authority fixes the compensation and pays all costs related to such assistance and related purposes, including all pretrial assistance to the defense. Additional compensation deemed necessary by the defense will be addressed by the convening authority or military judge.

b. Commanders will fund all ALTDS counsel travel in support of operational or training exercise deployments and all ALTDS counsel travel required for matters that are nonjudicial or administrative in nature. This includes separation boards, pre-deployment training, and medical travel.

6-6. Training

As required by paragraph 6-2, above, the RDC in coordination with the Senior Defense Counsel ALTDS, develops programs and policies designed to enhance the professional qualifications of defense counsel and ALTDS paralegal personnel. This will be accomplished primarily through the use of internally developed programs of instruction and attendance by ALTDS counsel and ALTDS paralegal personnel at continuing legal education courses offered by The Judge Advocate General's Legal Center and School (TJAGLCS). These programs may be supplemented at the discretion of the Senior Defense Counsel, ALTDS 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. Mutual support responsibilities

a. *General.* Staff judge advocates and senior defense counsel will develop administrative policies and procedures to meet local requirements and support the basic mission of the command being served. They should meet often to discuss matters of mutual concern. Provision of counsel in cases involving such administrative matters as financial liability investigations of property loss, 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 ALTDS will share that responsibility.

b. *Compliance with local policies.* The ALTDS counsel will comply with host installation command, personnel, and administrative policies; for example, duty hours, physical fitness, appearance, weapons qualification, uniform and equipment standards, and similar requirements, to the extent practicable and commensurate with the mission of USATDS. Senior defense counsel is encouraged to execute memoranda of understanding with local supporting units or organizations to reflect TDS independence and responsibility to ensure necessary Army and local standards are met. Approval authority for such MOUs rests with the RDC (including MOUs for ANG).

(1) The following exceptions to local policy exist independently of any MOU: ALTDS will not perform duty as installation or command staff duty officer or wear the shoulder patch or distinctive insignia of the local organization or command. The ALTDS counsel will wear shoulder patches or other distinctive insignia as determined by TJAG.

(2) In all other cases, the RDC will coordinate proposed exceptions with the Chief, USATDS.

c. *Assistance to the ALABAMA Trial Defense Service.* If the defense workload temporarily exceeds the capability of the ALTDS office to perform its mission the AL SDC will coordinate with the RDC for additional support. If the situation requires the OSJA to request additional TDS support he will coordinate the request with the RDC who may utilize assets from his region or submit a request through National Guard Bureau (NGB) TDS. Non-ALTDS counsel will not be detailed to a TDS office by an SJA without the approval of the Chief, USATDS, and when detailed, will perform defense duties under the supervision of the SDC. Normally, such duties will not involve representation at courts-martial or ACMJ, Art. 32, investigations. Non-ALTDS counsel should not assist Service members with matters related to the subject of an attorney-client relationship that the Service member already enjoys with a ALTDS counsel.

6-8. Detail of defense counsel

a. The SDC ALTDS details trial defense counsel for GCMs and SPCMs (AR 27-10, this authority is with the Chief, USATDS but may be delegated to the SDC). Detail of counsel will be reduced to writing and included in the record of trial or announced orally on the record at court-martial. The writing or announcement will indicate by whom the counsel was detailed.

b. The authority to detail counsel does not alter an accused's right to be represented by civilian counsel provided at no expense to the Government or by military counsel of the accused's own selection (whether or not assigned to ALTDS), if reasonably available. The act of detailing is an administrative designation by the detailing authority. It does not confer any status or rights nor does it alter any status or rights that may exist at the time of detailing. To meet requirements, the Chief USATDS, when applicable, may authorize SJAs to recommend the detail of non-ALTDS counsel. The Chief, USATDS or that officer's designee will detail non-USATDS counsel. The establishment of ALTDS does not affect the basic legal qualifications of any JA, certified under UCMJ, Art. 27(b), to perform defense counsel duties, when such are properly assigned.

6-9. Requests for individual military counsel

a. General. In circumstances when the accused and a requested individual military counsel assigned or detailed to ALTDS are within the South-East region, the RDC may delegate the authority to determine eligibility of individual military counsel to the SDC. In such delegation cases, the RDC will act on appeals from adverse determinations made by the SDC. In all other cases, the SDC determines the availability of ALTDS counsel when requested as individual military counsel under the provisions of RCM 506(b) and this regulation. The NGB TDS Commander, acts on appeals from adverse determinations made by the RDC. (See para 5-7d, above, for control and support of non-ALTDS individual military counsel.)

b. Reasonable availability determinations. The provisions of paragraphs 5-7d and 5-7e of this regulation apply.

c. Procedure. Request for ALTDS 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 5-7f. If the requested counsel is subject to the limitations in paragraphs 5-7c, 5-7d, or 6-10b (1) through (3), above, the convening authority will notify the accused that the requested counsel is unavailable. All other requests will be transmitted directly to the SDC ALTDS office of the SDC at which the requested counsel is stationed will be included as an information addressee.

6-10. Professional standard

a. General. The professional standards referred to in paragraph 5-8, above, apply to ALTDS counsel.

b. Exercise of independent professional judgment.

(1) Nothing in this chapter limits an ALTDS 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 ALTDS counsel.

(d) Trial Defense Service standard operating procedures.

(2) The ALTDS counsel will strictly comply with these directives. However, once an attorney-client relationship is formed pursuant to these rules and requirements, defense counsel have a positive duty to exercise independent judgment in control of the case. This duty is limited only by law, regulation, and the Army "Rules of Professional Conduct for Lawyers" (see AR 27-26). Complaints involving the professional conduct or performance of ALTDS counsel should be forwarded to the RDC, SDC ALTDS and the OSJA (for a determination to forward to Chief, USATDS, for action according to chapter 15, below).

Chapter 7

Alabama Army Trial Judiciary-Military Judge Program

7-1. General

a. Military Judge Program. The Military Judge Program is a system in which military judges are designated and detailed as judges of GCM and SPCM. This chapter governs the Alabama Army National Guard operation of the Military Judge Program and sets forth procedures to be followed in administering it (a military judge as defined in ACMJ Article 26). This regulation implements ACMJ, Art. 26, which provides for an independent judiciary within the Alabama National Guard to be detailed to each general and special court-martial.

b. Military judge of a court-martial.

(1) A military judge will be detailed to all GCMs and to each SPCM.

(2) A military judge will be an active or retired commissioned officer of the U.S. Army / Air Force or USAR who is—

(a) A member in good standing of the bar of the highest court of a state or a member of the bar of a Federal court for at least five years. Either a military judge certified by the service component TJAG or the Senior Force Judge Advocate of the state (see para 7-4 below for order of succession) or a judge of a court of competent jurisdiction who is approved by the Adjutant General. In the instance a military judge is not a member of the bar of the highest court of a State, the military judge shall be deemed admitted pro hac vice, subject to

filing a certificate with the senior judge advocate, subject to the same qualifications above and with notice and approval of the State Bar and Chief Justice of the Alabama Supreme Court.

(b) *Designation of a Military Judge.* The Adjutant General may consider the following factors when certifying an officer as a military judge:

- (1) Appropriate judicial decorum, civility and temperament;
- (2) Civilian judicial experience;
- (3) Military judicial experience;
- (4) Military legal experience.
- (5) Designation as a Judge Advocate;
- (6) Reputation;
- (7) Familiarity with the UCMJ and MCM;
- (8) Completion of the active component Military Judge;
- (9) Knowledge of general criminal law and procedures;
- (10) Education; training and experience;
- (11) Familiarity with the customs, procedures and organization of the service branch of the accused; and
- (12) Any other relevant factors.

(c) Certified to be qualified for duty as a military judge by TJAG. Army military judges under this sub-paragraph are certified by the Chief Trial Judge of the Army Trial Judiciary and Air Force military judges under this sub-paragraph are certified by the Chief Trial Judge of the Air Force Trial Judiciary. See RCM 503.

7-2. Qualifications of military judges

Refer to ACMJ and AMCM.

7-3. 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 ACMJ or the AMCM.

(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 considering (under ACMJ, Art. 39(a)).

(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 RCM 1102.

(3) The purpose of an ACMJ, Art. 39(a), session is to dispose of all matters not requiring the attendance of the members of the court. To achieve the maximum use of such a session, the military judge must ensure that counsel have due notice of the session and sufficient time to prepare for the disposition of matters that must or should be considered.

(4) Military judges may—

(a) Perform magisterial duties.

(b) Issue authorizations on probable cause under chapter 8 of this regulation.

(c) Conduct hearings to determine mental competency of an accused (subject to state law).

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

(e) Conduct investigations, hearings, or similar proceedings when detailed, appointed, or made available for appointment, by TAG.

(f) Grant search warrants.

b. Summary courts-martial. A military judge may be detailed to a SCM if made available by TAG.

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 understands of the request, the military judge should grant the request, absent unusual circumstances. If the trial counsel desires to contest the appropriateness of a trial by military judge alone, the military judge should hear arguments from trial and defense counsel before deciding the issue (RCM 903).

(2) In addition to duties and functions performed when sitting with members (except those relating to instructions), the military judge, when sitting as a court consisting of only a military judge, will—

(a) Rule on all questions of fact arising during the proceedings.

(b) Determine whether the accused is guilty or not guilty in the form of general findings (and will make special findings when required (under ACMJ, Art. 51(d)).

(c) If the accused is convicted, adjudge an appropriate sentence.

d. *Administrative responsibilities.* Each military judge is responsible for—

(1) Maintaining an orderly trial calendar that will make efficient use of available time and provide to the maximum extent possible for scheduling of trials as requested by convening authorities.

(2) Submitting required reports as directed by the Senior Force Judge Advocate.

(3) Cooperating closely with SJAs. 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.

7-4. Detailing of military judges

a. *Authority to detail military judges.* The Senior Force Judge Advocate or a designee is authorized to detail military judges for general or special courts-martial (see RCM 503(b)). The Senior Force Judge Advocate will designate the military judge who is currently assigned to the ALNG and certified by his/her service component TJAG. If that military judge is unavailable, because of recusal, physical disability, or geographic constraints then the Senior Force JA will designate in the following order: (This authority may be delegated to GCM military judges.)

(1) A current member of the ALNG who has been certified as a military judge by his/her service component TJAG.

(2) A current member of the ALNG who is both a judge advocate and an actively serving judge of a court of competent jurisdiction.

(3) A retired judge advocate of the ALNG who is actively serving judge of a court of competent jurisdiction.

(4) Any other military judge certified by their service component TJAG (i.e., USAR military judges).

(5) Any other military judge certified by the Senior Force JA.

b. *Detail of military judges within general court-martial jurisdictions.*

(1) The GCM military judge who is designated as primarily responsible for a GCM jurisdiction (see para 8-5c, below) will—

(a) Normally detail himself or herself to preside over the courts-martial 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 courts-martial cases referred to trial.

(2) When the GCM military judge is unavailable, the Senior Force Judge Advocate will detail a replacement.

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

d. *Docketing.* The GCM military judge designated will oversee docketing and calendar management within that jurisdiction.

e. *Cross-servicing.*

(1) Nothing in this regulation precludes the detail of a military judge from another armed service who meets the qualifications set out in ACMJ Art. 26.

(2) Army or Air Force military judges may preside at courts-martial of other Services, under RCM 503(b) (3).

7-5. Administrative and logistical support

a. The Senior Force Judge Advocate, and the MACOM SJA is responsible for providing support to the

military judge. This support includes, but is not limited to—

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

(2) Private office space appropriate for the grade and position.

(3) Office furniture to include an appropriate desk, chairs, carpeting, equipment, and supplies.

(4) Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

(5) Private long-distance telephone line, facsimile machine, digital scanner, wireless e-mail service, and e-mail accessibility.

(6) A Service member or civilian employee who will provide stenographic, clerical, and administrative assistance as required for the expeditious performance of duties to the military judge(s) assigned for duty at that installation.

(7) Modern computer hardware (to include a high quality desktop computer and laser printer), software, networking, and telecommunications equipment that meets standards established for the Judge Advocate General's Corps Network (jagcnet), Legal Automation Army-Wide System, and connection with a local area network that will permit access to e-mail and the World Wide Web.

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

(9) See paragraph 5–9 above.

b. Sites of trials. At locations where military judges preside over court-martial proceedings, the command will provide administrative and logistical support.

c. Courtroom security.

(1) When circumstances warrant and the military judge so directs, the local staff judge advocate will coordinate appropriate detailing of an armed MP to provide security at a court-martial. The MP will take general direction from the military judge and trial counsel and will not act as bailiff or escort or be an expected witness in the case.

(2) Staff judge advocates, in coordination with the GCM military judge primarily responsible for that GCM jurisdiction, will periodically inspect court-martial facilities to assess security vulnerabilities and make such improvements as deemed necessary to provide a safe and secure facility.

7–6. Rules of court

The military judge will promulgate local or general rules of court as necessary to ensure the efficient disposition of the case.

7–7. Requests for military judges as individual military counsel

Military judges may not serve as individual military counsel.

7–8. Search, Seizure, and Apprehension Authorizations

a. Authority of military judges to issue authorizations. A military judge may issue search authorization pursuant to MRE 315 (d) (2) and (c).

b. The procedures for issuing of search and seizure and search and apprehension authorizations are contained in MREs 315 and 316. Authorizations to search and seize or search and apprehend may be issued on the basis of a written or oral statement, electronic message, or other appropriate means of communication. Information provided in support of the request for authorization must be sworn. The fact that sworn information is generally more credible and often entitled to greater weight than information not given under oath should be considered.

c. The AGO Form 3744, Affidavit Supporting Request for Authorization to Search and Seize or Apprehend, may be used if the supporting information is to be sworn. Authorizations to search and seize or search and apprehend may be issued orally or in writing. The AGO Form 3745 (Search and Seizure Authorization) or AGO Form 3745-1 (Apprehension Authorization), may be used if an authorization is issued in writing.

7–9. Oaths

See chapter 9, below, for the authority, procedures, and forms for administering oaths to persons providing information to commanders and other military personnel empowered to issue authorizations to search and seize.

7–10. Execution and disposition of authorizations and other related papers

a. Execution. The execution of authorizations to search and seize is governed by MRE 315(h). In addition to those requirements, the authorization should be executed within 10 days after the date of issue. An inventory of the property seized will be made at the time of the seizure or as soon as practicable. A copy of the inventory will be delivered to the person from whose possession or premises the property was taken. The DA Form 4137 (Evidence/Property Custody Document) may be used.

b. Disposition of authorization and other papers. After the authorization has been executed, the authorization and a copy of the inventory will be returned to the issuing authority. Thereafter, all documents and papers relative to the search or seizure will be transmitted to the appropriate law enforcement office. They will be filed for use in any future litigation or proceeding on the results of such a search.

7–11. Recovery and disposition of property

a. Evidence retained for courts-martial. Evidence retained for courts-martial will be disposed of according to applicable regulations. Staff judge advocates will make every effort to return property, when appropriate, as expeditiously as possible by substituting photographic or written descriptions when such measures will not jeopardize pending prosecutions.

b. Property seized by the U.S. Army Criminal Investigation Command. The provisions of AR 195–5 govern the recovery and disposition of property seized pursuant to an authorization to search and seize conducted by U.S. Army criminal investigators.

c. Property seized by other authorized persons. The provisions of AR 190–30, chapter 4, govern the recovery and disposition of property seized pursuant to a search or seizure by other authorized persons.

7–12. 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.

7–13. Legality of searches and seizures

The requirements set forth in this chapter are administrative only and the failure to comply does not, in and of itself, render the search or seizure unlawful within the meaning of MRE 311. The “privatization” of on-post housing and other facilities in no way diminishes the authority of military judges and military magistrates, garrison commanders or installation commanders to authorize searches of on-post housing or facilities whether “privatized” or not.

Chapter 8 Courts of Inquiry

8–1. General

This chapter applies only to courts of inquiry. To the extent that a court of inquiry is necessary under the ACMJ the provisions of Ch. 10 AR 27-10 will apply. *See also* Ch. 7 MCM (2012); Articles 36-54.

Chapter 9 Oaths

9–1. General

This chapter implements ACMJ, Arts. 42(a) and 136(a) (6), and various rules of the AMCM. It authorizes commanders to administer oaths related to military justice. It also authorizes other military personnel who are empowered to authorize searches and seizures (under MRE 315(d)) to administer oaths for such searches and seizures and for apprehensions. This chapter prescribes the form and procedures of oaths to be administered to—

a. Personnel of courts-martial.

b. Persons providing sworn information supporting requests for authorizations to search and seize and authorizations to apprehend (see Chap. 9 of this regulation for issuance of search and seizure authorizations).

9–2. Persons required to be sworn

a. All court-martial personnel including the following will take an oath to perform their duties

faithfully, under UCMJ, Art. 42(a):

- (1) The military judge.
- (2) Members of GCMs and SPCMs.
- (3) Trial counsel.
- (4) Assistant trial counsel.
- (5) Defense counsel.
- (6) Assistant defense counsel.
- (7) Reporters.
- (8) Interpreters.

b. Additionally, an individual defense counsel, military or civilian, will take a similar oath, under RCM 807(b) (1); 901(d) (5).

c. Oaths to court-martial personnel need not be administered in the presence of the accused.

d. Commanders are authorized to administer oaths for all military justice purposes. All other military personnel who are empowered to authorize searches and seizures (under MRE 315(d)) are authorized to administer oaths for such searches, seizures, and apprehensions.

9-3. Oath administration procedure for military judges

a. A military judge will take a written oath before an officer qualified to administer oaths by ACMJ, Art. 136(a), to faithfully and impartially perform his or her duties in all cases to which the military judge is detailed under ACMJ, Art. 26(b) and RCM 807(b) (1) (A)). An oath need not be taken again when the military judge is detailed to a court-martial. A military judge of another armed force who has taken an oath to perform his or her duties properly in all cases to which he or she is detailed need not take an oath when detailed as a military judge at courts-martial convened in the Army.

b. It is unlikely that a military judge, not previously sworn, will be detailed in a particular case. In such event, however, the military judge will follow the procedure in subparagraph *c*, below, ordinarily prior to trial. In any case the procedure will be followed not later than the first ACMJ, Art. 39(a) session.

c. The first person oath is the only oath that may be administered for cases to which a military judge is detailed.

9-4. Oath administration procedure for court members

The trial counsel will normally administer the oath to court members in open session. As a matter of policy, such oaths should be administered at every court-martial to impress on the participants the solemnity of the proceedings. At the discretion of the officer who convened the court, however, the court members may take a written oath to perform their duties faithfully in all cases referred to that court. The convening authority authorizing the administration of this type of oath will maintain a copy of the oath so that it may readily be determined that court members have been previously sworn. When court members are not sworn because they have been administered such an oath previously, this fact will be noted in the record of trial.

9-5. Oath administration procedure for reporters

a. The trial counsel will administer the oath to the reporter at the court-martial. At the discretion of the SJA of the command to which the reporter is assigned (or employed), reporters may execute a written oath to perform their duties faithfully in all cases to which they are detailed (or employed), before an officer qualified to administer oaths (see ACMJ, Art. 136(a)).

b. When a reporter who has been so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. The SJA authorizing the administration of a written oath will maintain a copy of such oath so that it may readily be determined that the reporter has been previously sworn. When reporters are not sworn because they have been administered such an oath previously, this fact will be noted in the transcript or record of trial.

9-6. Oath administration procedure for interpreters

a. The trial counsel or SCM officer will administer the oath to interpreters at the court-martial. At the discretion of the SJA of the command to which an interpreter is assigned (or employed), interpreters may take a written oath to interpret truly in all cases to which they are detailed or employed. The SJA will maintain records of the written oath so that it may be readily determined that an interpreter has been previously sworn.

b. When an interpreter so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. When interpreters are not sworn because they have previously been administered a written oath, this fact will be noted in the transcript or record of trial.

9–7. 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 9–3, above (see RCM 807(b)(2), Discussion (A)):

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

b. Oath for counsel. The following oath, as appropriate, will be administered to trial counsel, assistant trial counsel, defense counsel (individually requested, detailed, or civilian), and each assistant defense counsel (if they are not members of the JAGC or other Services who have been previously sworn according to paragraph 9–4, above (under RCM 807(b)(2), Discussion (C))):

Do you (name(s) of counsel) swear (or affirm) that you will faithfully perform the duties of (individual) (detailed) counsel in the case now in hearing? So help you God?

c. Oath for court members. The following oath, as appropriate, will be administered to court-martial members according to paragraph 10–5, above (see RCM 807(b) (2), Discussion (B)):

Do you (name(s) of member(s) (each of you)) swear (or affirm) that you will answer truthfully the questions concerning whether you should serve as a member of this court-martial; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws applicable to trials by court-martial, the case of the accused now before this court; and that you will not disclose or discover the vote or opinion of any particular member of the court (upon a challenge or) upon the findings or sentence unless required to do so in due course of law? So help you God?

d. Oath for reporters. The following oath, as appropriate, will be administered to court reporters (RCM 807(b) (2), Discussion (D)):

Do you (name) swear (or affirm) that you will faithfully perform the duties of reporter (to this court) (to any court to which you will be detailed)? So help you God?

e. Oath for interpreters. The following oath, as appropriate, will be administered to every interpreter in the trial of any case before a court-martial before he or she enters upon his or her duties (under RCM 807(b)(2), Discussion (E)):

Do you (name) swear (or affirm) that (in the case now in hearing) (in any case to which you are detailed) you will interpret truly the testimony? So help you God?

9–8. Oath administration procedure for persons providing sworn information in support of requests for authorizations to search and seize

a. General. Oaths are not required to be given to persons providing information in support of requests for authorizations to search and seize. However, if the authorization is to be based on sworn information, the procedures set forth in *b*, below should be followed. Nothing in this regulation is intended to prohibit the issuance of authorizations to search, seize, or apprehend on the basis of unsworn written or oral statements. Sworn or affirmed information, however, is generally more credible and often entitled to greater weight than information not given under oath (see para 8–9).

b. Procedure.

(1) Commanders and other military personnel empowered to authorize searches and seizures, on probable cause, may administer oaths to persons presenting information in support of requests for such authorizations. The information presented may be oral or in writing. Where written information is provided by message or written statement, other persons authorized to administer oaths may do so. The authorizing official may accept representations by the person providing the information that this has been done. The

representations should include the name and authority of the person administering the oath and the date and place of administration.

(2) If the information presented to the authorizing official consists solely of previously sworn affidavits, the individual requesting the authorization need not be sworn. If the requestor or any other individual also provides any additional information based on his or her personal knowledge to the authorizing official for use in the probable cause determination, that individual must do so under oath or affirmation. Sworn or affirmed information, however, is generally more credible and often entitled to greater weight than information not given under oath (see para 8–9, above).

(3) Information also may be presented by telephone, radio, or similar device to those empowered to authorize searches, seizures, and apprehensions. The authorizing official may administer the oath over such devices.

(4) In addition to sworn or affirmed information presented to the authorizing official pursuant to a request for authorization to search and seize or apprehend, the authorizing official may consider any information he or she has, provided such information would not preclude him or her from acting in an impartial manner.

9–9. Form of oaths for probable cause searches, seizures

No specific form of oath or affirmation is required as long as it imposes upon the requester a moral or legal responsibility for the correctness of the information. The following oath or affirmation, as appropriate, may be administered to persons providing information supporting requests for authorizations to search and seize:

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?

9–10. Form of oath for the accused following a plea of guilty

The following oath will be administered to the accused prior to the military judge questioning the accused Concerning the accuracy of his or her plea (see RCM 910(e)):

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

Chapter 10 Court-Martial Orders

10–1. 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 RCM 504(d)).

b. Promulgating orders. An initial promulgating order is used to promulgate the results of trial by a GCM or SPCM and the initial action of the convening authority thereon. A supplementary promulgating order is used to promulgate any subsequent action taken by the convening or higher authority on findings or sentence of a GCM, SPCM, or SCM (see RCM 1114).

c. Withholding orders. The TAG may withhold all subordinate commanders' authority to convene courts martial's, as well as the adjudication of all offenses. Any senior commander may withhold from their subordinate commanders the authority to convene a court-martial, as well as the adjudication of all offenses. (This authority may include withholding by conditions of rank or by the type of offense).

10–2. Convening orders

The convening authority will issue convening orders for each GCM or SPCM as soon as practicable after he or she personally determines the members of a court-martial. The convening authority may issue a convening order for each SCM at the time of referral by annotating the charge sheet (RCM 1302(c)). Oral convening orders will be confirmed by written orders as soon as practicable. Convening orders may be amended. Summary court-martial convening orders may be amended by an attachment to the charge sheet (see app 4, AMCM, 2013).

10–3. Promulgating Orders

a. The convening authority will issue an order promulgating the results of trial for all GCMs and SPCMs (see fig 11–1, below, as well as, AMCM, 2013). An initial SCM promulgating order need not be issued (see RCM 1114(a) (3)). A copy of the initial promulgating order, or a copy of the record in SCM cases,

will be immediately forwarded to the commander of the proper confinement facility and the finance and accounting officer providing finance service to that facility (see also, para 5–32*b*, above, requiring 24-hour notification of convening).

b. Action taken on the findings or sentence of a GCM, SPCM, or SCM subsequent to the initial action by the convening authority will be promulgated, as appropriate, by—

(1) The convening authority who took the initial action in the case.

(2) The commanding officer of the accused who is authorized to take the action being promulgated.

(3) An officer exercising GCM jurisdiction over the accused at the time of the action, or

(4) The Secretary of the Army.

c. An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued.

d. Initial or supplementary promulgating orders in GCMs, SPCMs, and SCMs are designated “general court-martial order,” “special court-martial order,” or “summary court-martial order,” respectively.

e. All promulgating orders will identify victims and witnesses by initials only, for example “...cause Ms. A.B. to engage in a sexual act...” and “...make to SA B.C., an official statement...” No promulgating order will publish personal information concerning victims or witnesses including, but not limited to, a home address or bank account number.

10–4. Format for summary court-martial orders

a. Summary court-martial convening order. A SCM may be convened at the time of referral by annotating section V of the charge sheet (see app 4, AMCM, 2013) 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 ACMJ, Art. 24(a) (4), the charge sheet will reference the order granting SCM authority (see RCM 504(d)). Amendments to SCM convening orders will be made by attachments to the charge sheet. The SCM convening orders need not be numbered (see para 11–5*a*(2), below).

b. Summary court-martial promulgating order. Initial SCM promulgating orders are not required. Supplemental promulgating orders will be issued using the format in paragraph 11–5, below, and Appendix H, AMCM, 2013.

10–5. Format for court-martial orders

a. Heading.

(1) The heading of court-martial orders (CMOs) is the same as that used for other orders, except that the words “court-martial convening order,” “general court-martial order,” “special court-martial order,” or “summary court-martial order,” are substituted for the word “Orders” (see AR 600–8–105).

(2) Courts-martial orders within each category convening (except SCM convening orders), 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.

(4) If the initial promulgating order for a general or special court-martial contains findings of guilty as to any qualifying military offense, the Staff Judge Advocate will ensure that the top of the first page of the order is annotated in bold-face type with “DNA processing required. 10 USC 1565.” A “qualifying military offense” is an offense determined by the Secretary of Defense to be a qualifying military offense for the purposes of 10 USC 1565 (see DODI 5505.14).

b. Body.

(1) Detailed instructions on CMOs are contained in Appendixes 6 and 17, AMCM, 2013.

(2) Court-martial convening orders (see RCM 504(d) and app 6, AMCM, 2013). Personal identifying information such as social security numbers will be redacted from any documents associated with a court-martial

in compliance with the “Beason-Hammon Alabama Taxpayer and Citizen Protection Act” (E-Verify).

(3) Initial GCM and SPCM promulgating orders (see fig 11–1, above). The body of the order will contain the elements outlined in RCM 1114 in the format of Appendix 17, AMCM, 2013. 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 11-2 through 11-7, below, as well as app 17, AMCM, 2013). The order will be in the format contained in Appendix 17, AMCM, 2013, and the order will include, if applicable, the following:

(a) The date the sentence was adjudged if the supplementary action in any manner affects a sentence of confinement.

(b) The courts-martial case number (ARMY0000000) inserted in parentheses at the end of the distribution list.

c. *Authentication.* Court-martial orders are authenticated in the same manner as other orders discussed in AR 600–8–105 with the exception of the authority line. The authority line in convening orders indicates that the commander has personally acted with respect to the selection of the personnel named in the order. In court-martial orders, the authority line reads—

(1) “By command of (grade and last name)” when the commander is a general officer.

(2) “By order of (grade and last name)” when the commander is below the grade of brigadier general.

d. *Distribution designation.*

(1) The word “distribution” is placed beginning at the left margin opposite the signature block. A list of the individuals, organizations, and installations to which copies of the order will be sent and the number of copies to be furnished will be indicated under “distribution.” Distribution includes one copy for the reference set, when needed, and the record set of military publications.

(2) Standard distribution of orders within a command and to agencies requiring full distribution may be designated by letters, for example, distribution A, B, or combinations thereof, to indicate all or part of the distribution made.

d. Agencies included in each letter designation are shown in a distribution list prepared and published by the headquarters or agency concerned (see AR 600–8–105).

e. *Corrections.* Court-martial orders are corrected in the same manner as other orders discussed in AR 600–8–105, with the following exceptions:

(1) Changed material will be underscored.

(2) Further corrections will be made by additional corrected copies, as necessary, with the figure “2d,” “3d,” and so forth, inserted before the words “corrected copy.” Extreme care should be used in preparing court-martial orders to avoid the need for corrections.

10–6. Modification of findings or sentence

a. Orders modifying the findings or all or any part of the sentence of a GCM, SPCM, or SCM issued subsequent to the order promulgating the result of a trial are published in appropriate supplementary CMOs.

b. *Self-executing punishments.*

(1) Where the convening authority initially approves an adjudged dishonorable or bad conduct discharge, that punishment is self-executing in cases where the accused—

(a) Received no sentence to confinement; or

(b) Has completed a sentence to confinement; and

(c) Is on excess or appellate leave; and

10–7. Distribution of court-martial orders

Official copies of CMOs and amending orders, if any, issued from the various headquarters will be thus Dispersed

a. *Convening orders.* Convening orders will be distributed as follows:

(1) One copy to each individual named in the order.

(2) One copy to the officer exercising GCM jurisdiction (inferior courts only).

(3) One copy each for original and copies of the record of trial.

b. *Initial court-martial promulgating orders.* Regardless of the sentence approved, the initial court-martial promulgating order will be distributed as follows:

(1) One copy to each individual tried (included in the record of trial provided to the accused).

(2) One copy each to the military judge, trial counsel, and defense counsel of the court-martial at

which the case was tried.

(3) One copy each to the immediate and next higher commander of the individual tried.

(4) Two copies for each individual tried to the GCM authority (the SJA).

(5) One copy each to the commanding officer of the installation and the commander of the corrections facility where the individual tried is confined.

(6) One copy to the MPD or PSC maintaining the personnel records of the individual tried, addressed to the Records Section, in compliance with AR 600–8–104. The MPD or PSC will ensure the order is transmitted to the Finance and Accounting Office maintaining the pay account of the individual tried for filing and for use as a substantiating document, according to AR 37–104–4.

c. Initial general court-martial and special court-martial orders promulgating acquittals, terminations, or approved sentences not involving death, dismissal, punitive discharge, or confinement for 1 year or more. In addition to the distribution shown in subparagraphs *b*(1) through (16), 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:

d. Initial court-martial promulgating orders with an approved sentence that involves death, dismissal, punitive discharge, or confinement for 1 year or more, whether or not suspended. In addition to the distribution shown in subparagraphs *b*(1) through (12), above, initial court-martial promulgating orders with an approved sentence that involves death, dismissal, punitive discharge, or confinement for 1 year or more, whether or not suspended, will be distributed as directed:

(a) Mutiny.

(b) Treasonable acts in violation of ACMJ, Arts. 99, 104, or 134.

(c) Spying or espionage.

(d) Desertion.

(e) Refusal to perform service in the Army of the United States or refusal to wear the uniform of the Army of the United States.

(3) Twelve copies provided to the records of each accused for delivery (normally, by the guard) to the corrections facility, or the institution in which the accused is to be confined under sentence.

e. Summary court-martial record of trial.

(1) On completion of the convening authority's action, the SCM record of trial (DD Form 2329) will be distributed as follows:

(a) One copy to the accused.

(b) One copy will be retained by the SCM authority.

(c) If the accused is confined, one copy to the commander of the confinement facility in which the accused is or will be confined.

(d) Additional copies will be distributed as directed.

(2) On completion of review under RCM 1112 or RCM 1201(b) (2), the original and copies of the SCM record of trial reflecting the completed review (see para 5–32*d*, above) will be distributed as follows:

(a) One copy to the accused.

(b) One copy will be retained by the SCM authority.

(c) Additional copies will be distributed as directed *d*.

(d) The original will be retained by the commander exercising GCM authority over the SCM convening authority, to the attention of the SJA.

f. Supplementary court-martial orders.

(1) A supplementary order promulgating a self-executing dishonorable or bad conduct discharge need not be issued.

(2) General court-martial and special court-martial supplementary orders will be distributed in the same manner as provided for initial CMOs shown in *b*, *c*, and *d*, above, except that copies are not required to be forwarded to the military judge and trial or defense counsel of the court-martial at which the case was tried.

(3) Summary court-martial supplementary orders will be distributed as follows:

(a) One copy will be provided to each accused.

(b) One copy forwarded to the commander exercising GCM authority, to the attention of the SJA, over the SCM authority (for attachment to the original record of trial).

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

(4) If the authority issuing the supplementary order is other than the authority initially acting on the case, the latter will be forwarded two copies of the supplementary order. These copies will be made available for

information and annotation of military police and criminal investigation reports.

Chapter 11

Appellate Review Matters

Appeals to the Alabama Military Court Martial Review Panel will be in accordance with the current rules of the Alabama Court of Criminal Appeals. (See Ala. Code 31-2A-66 and 31-2A-67).

11–1. Scope

This chapter discusses appellate review matters pertaining to—

- a.* Appeals under the ACMJ, Arts. 62 and 66.
- b.* The waiver or withdrawal of an appeal under ACMJ, Art. 61.
- c.* Petitions for extraordinary relief filed by the United States.

11–2 Appellate advice after trial

a. Apart from the advice an accused has received pursuant to RCM 1010, the trial defense counsel will explain to the accused the rights to appellate review that apply to the case. The trial defense service counsel is responsible for representing an accused throughout the appellate process.

11–3. Rules of appellate procedure

See the Rules of Procedures for the Alabama Court of Criminal Appeals.

Chapter 12

The ALNG Military Justice Report

12–1. Preparation

The SJA of each command having GCM jurisdiction will prepare a monthly ALNG Military Justice Report for their command and submit to the ALNG-OSJA. The SJA will obtain data for the report from the commands attached or assigned to the GCM jurisdiction and maintain a record for TAG balance score card, internal controls review, and installation status reports.

12–2. 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 requests for the convening of a CM pursuant to ACMJ, Arts. 22-29 during the month.
- (3) Processing time for Administrative Boards and Nonjudicial punishments.
- (4) Civilian convictions.

(5) Total number of discharges conducted under AR 135–178, chapter 12, misconduct and chapter 11 Substance Abuse failures; include any which have been approved for court-martial cases.

(6) Additional information regarding the types of offenses and demographic data, as required by Military Justice Report format.

b. If a GCM jurisdiction is dissolved, unless the records are transferred to the office of the SJA of another GCM jurisdiction, the report will include data up to the date of dissolution.

12–3. Routing and due date

a. The MACOM SJAs will ensure submission of the Military Justice Report to the ALNG-OSJA 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. The MACOM SJA is responsible for submitting the Military Justice Report to the ALNG-OSJA for all subordinate units, regardless of whether those subordinate units also have GCMCA authority.

Chapter 13

Allegations of Misconduct and Suspension of Counsel and Military Judges

Section I General

13-1. Scope

This chapter implements and amplifies RCM 109. It sets forth standards and procedures for handling complaints by and against counsel, including civilian counsel, and military judges. Counsel before courts-martial, appellate counsel, and military judges play a vital role in the preservation military justice and discipline. A consequent obligation of this role is the maintenance of the highest standards of ethical conduct. Fundamental ethical principles are available as guides in maintaining this integrity (see para 5-8).

13-2. Withdrawal of certification by The Judge Advocate General

Nothing contained in this regulation is to be construed as a limitation on the power of TJAG to issue or withdraw—

a. Any certification of qualification to act as military judge made pursuant to ACMJ, Art. 26, or Any certification of competency to act as counsel before GCM made pursuant to ACMJ, Art. 27 (b).

Section II Suspension of Counsel

13-3. General

a. Action may be initiated to suspend counsel (under RCM 109) when a person acting or about to act or likely to act, as counsel before proceedings governed by the ACMJ

(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 ACMJ, Art. 27(b), or

(2) Has been selected or obtained as counsel by the accused under ACMJ, Art. 38 (b).

(3) Has appeared as counsel for the accused in proceedings governed by the ACMJ or the AMCM or is likely to represent the accused at such proceedings in the future.

13-4. 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 ACMJ, Art. 98.

(8) Attempting to act as counsel in a case involving a security matter by one who is a security risk.

(9) Disbarment or suspension by a Federal, State, or foreign court.

(10) Suspension from practice as counsel before courts-martial by the JAG of another armed force or by the USCAAF.

(11) Flagrant or continued violations of any specific rules of conduct prescribed for counsel in paragraph 5-8, above, or other applicable standards.

(12) Violation of the Army “Rules of Professional Conduct for Lawyers” (under AR 27-26) or other applicable ethical standards, whether such misconduct occurs before a military court or other tribunal.

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.

13-5. 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 ACMJ, Art. 15.
- (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 (ACMJ, Art. 48; RCM 109). If admonition or punishment is inappropriate or fails to achieve the desired standard of behavior, the court should recess and report the fact to the supervising staff or command judge advocate or regional defense counsel for processing according to AR 27-1.

d. By an appellate court. Action to suspend a person acting as appellate counsel will be referred to the supervising Senior Force Judge Advocate for processing according to AR 27-1.

13-6. 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 ACMJ or the AMCM.

13-7. Modification or revocation of suspension or decertification

The Judge Advocate General, or TJAG's designee, may (on petition of a person who has been suspended or decertified as counsel (under ACMJ, Art. 27(b)), and on good cause shown) modify or revoke a prior order to suspend or decertify.

13-8. 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

13-9. General

Action may be initiated to suspend or revoke the certification to act as military judge (ACMJ, Art. 26; RCM 109) when a person acting or about to act as trial or appellate judge—

- a.* Is, or has been found guilty of professional, personal, or judicial misconduct or of unfitness of such 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.

13-10. Grounds

A military judge may be censured, suspended from acting as military judge, or removed from the judicial role by revocation of his or her certification (UCMJ/ACMJ, Art. 26) for actions that—

- a.* Constitute misconduct, or constitute judicial misconduct or unfitness, or
- b.* Violate the "Code of Judicial Conduct for Army Trial and Appellate Judges," the Army "Rules of Professional Conduct for Lawyers" (see AR 27-26), or other applicable standards.

13–11. 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—Relief from duties as military judge.

- (1) Censure.
- (2) Admonition.
- (3) Instruction.
- (4) Other sanctions, including punitive ones, as may be warranted.

b. In appropriate cases, the Chief Judge, U.S. Army Judiciary, may temporarily suspend military judges from participation in the trial of cases until completion of the inquiry. In appropriate cases, TJAG may temporarily suspend military judges from participating in the trial of cases or appellate judges from participating in the appellate review of cases, until completion of the inquiry.

13–12. Procedure

Information on alleged judicial misconduct or unfitness will be reported to the Chief Trial Judge in the case of trial judges or the Chief Judge, U.S. Army Court of Criminal Appeals, in the case of appellate judges, for processing according to AR 27–1.

13–13. Modification or revocation of suspension or decertification

The Judge Advocate General may (on petition of a person who has been suspended or decertified as a military judge (UCMJ/ACMJ, Art. 26), and on good cause shown) modify or revoke a prior order to suspend or decertify, on the advice of the Chief Judge, USACCA. The Judge Advocate General may (on petition of a person who has been suspended or decertified as a military judge (UCMJ/ACMJ, Art. 26), and on good cause shown) modify or revoke a prior order to suspend or decertify on the advice of the Chief Judge, U.S. Army Judiciary/U.S. Air Force Judiciary.

Chapter 14

Victim and Witness Assistance

Section I

General Description

14–1. Purpose

This chapter implements DODD 1030.1 and DODI 1030.2. 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.

14–2. 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 trauma. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence, or sexual misconduct.

c. Effective victim and witness programs are multidisciplinary and utilize all related military and civilian agencies. Each victim/witness liaison (VWL) must be familiar with all such agencies and programs to ensure that necessary services are provided. Multidisciplinary participants include, but are not limited to, investigative and law enforcement personnel, chaplains, health care personnel, Family advocacy/services personnel, JAs and other legal personnel, unit commanding officers and noncommissioned officers, and corrections/confinement facility personnel. In most instances, installations are expected to provide required

services without referral to outside agencies.

d. A person's status as a victim or witness does not preclude and should not discourage a DA official's appropriate recognition of conduct of the victim or witness during or following the perpetration or attempted perpetration of a crime, that clearly demonstrates personal courage under dangerous circumstances. Examples of such conduct include saving of human life under hazardous conditions or extraordinary sacrifice that aids or supports military law, order, or discipline, and that would otherwise merit official recognition (see AR 672–20 and AR 600–8–22). Such recognition normally should be delayed until after local disposition of the incident.

e. The provisions of this chapter are intended to provide internal DA guidance for the protection and assistance of victims and witnesses, and for the enhancement of their roles in the military criminal justice process, without infringing on the constitutional and statutory rights of the accused. These provisions are not intended to and do not create any entitlements, causes of actions, or defenses, substantive or procedural, enforceable at law, by any victim, witness, or other person in any matter, civilian or criminal, arising out of the failure to accord a victim or witness the services enumerated in this chapter. No limitations are hereby placed on the lawful prerogatives of DA or its officials.

14–3. Application

a. This chapter applies to those DA components engaged in the detection, investigation, or prosecution of crimes under the ACMJ, and in the detention and incarceration of military accused. This chapter is intended to apply to all victims and witnesses in ACMJ proceedings or investigations. While special attention will be paid to victims of serious or violent crime, all victims and witnesses of crime will receive the assistance and protection to which they are entitled.

b. Provisions of this chapter may also apply to victims or witnesses of crimes under the jurisdiction of State, other Federal, or foreign authorities during any portion of the criminal investigation or military justice proceedings conducted primarily by the Army or other DOD components.

14–4. 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.

14–5. 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 ACMJ. Such individuals will include, but are not limited to, the following:

(1) Military members and their Family members.

(2) When stationed outside the continental United States, DOD civilian employees and contractors and their family members. This applies to services not available to DOD civilian employees and contractors, and their family members, in stateside locations, such as medical care in military medical facilities.

(3) When a victim is under 19 years of age, incompetent, incapacitated or deceased, the term includes one of the following (in order of preference): a spouse; legal guardian; parent; child; sibling; another family member; or another person designated by a court or the component responsible official, or designee.

(4) For a victim that is an institutional entity, an authorized representative of the entity. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.

b. Witness. A person who has information or evidence about a crime and provides that knowledge to a DOD component concerning an offense within the component's investigative jurisdiction. When the witness is a minor, this term includes a family member or legal guardian. The term "witness" does not include a defense witness or any individual involved in the crime as a perpetrator or accomplice.

Section II

Victim/Witness Assistance Program

14-6. General

a. The Victim/Witness Assistance Program is designed to accomplish the objectives set forth in paragraph 17-4, above, through—

(1) Encouraging the development and strengthening of victim and witness services.

(2) Consolidating information pertaining to victim and witness services.

(3) Coordinating multidisciplinary victim/witness services by and through victim and witness liaisons.

b. The Judge Advocate General is the component-responsible official in the DA for victim and witness assistance. As such, TJAG exercises oversight of the program to ensure integrated support is provided to victims and witnesses.

c. Staff judge advocates are the local responsible officials for victim and witness assistance within their GCM jurisdictions. Accordingly, they will—

(1) Establish and provide overall supervision for the Victim/Witness Assistance Program within their GCM jurisdictions.

(2) Ensure coordination, as required, with other GCM jurisdictions, or State or Federal victim and witness assistance programs.

(3) Establish a Victim and Witness Assistance Council, to the extent practicable, at each significant military installation to ensure interdisciplinary cooperation among victim and witness service providers. Existing installation councils, such as The Family Advocacy Case Management Team, may be used as appropriate.

(4) Ensure development of appropriate local management controls to ensure compliance with this chapter.

d. Department of the Army and installation inspectors general will provide additional oversight and review of the management of the Victim/Witness Assistance Program during staff assistance visits and inspections.

14-7. Victim/witness liaison

a. Designation. Staff judge advocates will designate, in writing, one or more VWLs they have certified as qualified to administer the Victim/Witness Assistance Program for their jurisdictions. This requirement continues in the event of deployment such that at least one officer or, if not practicable, an E-6 or above, accompanying a GCMCA is appointed as a VWL. Staff judge advocates will provide a copy of such designation to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3B548, Washington, DC 20310-2200 including the name, duty address, duty phone number (including DSN prefix), facsimile number, and duty e-mail address of the new VWL.

b. Criteria and certification. The designated VWL should, when practicable, be a commissioned officer, or civilian in the grade of GS-11 or above. When necessary, an enlisted person in the grade of E-6 or above, or civilian in the grade of GS-6 or above, may be designated as a VWL if a commissioned officer is not reasonably available. A VWL is certified to perform VWL duties upon completion of the Judge Advocate General's Officer Basic Course, or Graduate Course; or attendance at a DOD or HQDA-sponsored VWL regional training event; or after completing training designated by HQDA or the certifying SJA. When for geographic or operational reasons, it is necessary to designate more than one VWL within a GCM jurisdiction, the SJA will ensure that the responsibilities for cases or areas of each VWL are clearly defined. The VWL responsibilities should be outside the military justice section to the extent permitted by resources. To be most effective, VWLs must be perceived as impartial actors in the prosecution process. To the extent permitted by resources, SJAs should refrain from appointing attorneys as VWLs. Attorneys assigned as VWLs must ensure that victims and witnesses understand the attorney's role as a VWL. The attorney must clearly explain that no attorney-client relationship is formed as a result of VWL services provided by the attorney.

c. Role. The role of the VWL is one of facilitator and coordinator. The VWL will act as a primary point of contact through which victims and witnesses may obtain information and assistance in securing available victim/witness services. The VWL will act in conjunction with the unit victim advocate who is responsible for providing crisis intervention, referral, and ongoing nonclinical support to a sexual assault victim (see AR 600-20, chap 8).

14-8. Identification of victims and witnesses

At the earliest opportunity after the detection of a crime, and where it may be done without interfering with an investigation, the law enforcement official or commander responsible for the investigation or other individual with victim/witness assistance responsibilities under this chapter will—

a. Identify the victims or witnesses of the crime in accordance with the definitions in paragraph 17-5.

b. Inform the victims and witnesses of their right to receive the services described in this regulation,

and the name, title, official address, and telephone number of the VWL and how to request assistance from the VWL in obtaining the services described in this regulation. The DD Form 2701 (Initial Information for Victims and Witnesses of Crime) will be used for this purpose. This notification is required in all cases, regardless of maximum punishment under the ACMJ or other statutory authority, or intended disposition of the offense. In cases where the victim is no longer located at the military installation where the alleged crime occurred, the victim should be referred to the nearest available VWL, who may not necessarily be the VWL where the alleged crime occurred. To determine where the nearest VWL is located, consult appendix E, below, or consult OTJAG (DAJA-CL).

c. Report victim and witness notification in accordance with DODI 1030.2 and this regulation.

d. Ensure that victims receive assistance under the guidelines set forth in this chapter for victims identified as a result of investigations of potential ACMJ violations conducted in accordance with AR15-6.

14-9. Initiation of liaison service

a. Staff judge advocates or their designees will coordinate with military law enforcement, criminal investigative, and other military and civilian multidisciplinary agencies to ensure that victims and witnesses of crime are provided the name, location, and telephone number of a VWL. Procedures should be established to ensure timely notification, however, notification by law enforcement and criminal investigative personnel should not interfere with ongoing investigations. Staff judge advocates are encouraged to establish memoranda of agreement to ensure a cooperative relationship with local civilian agencies to identify, report, investigate, and provide services and treatment to victims.

b. At the earliest opportunity, but no later than appointment of a ACMJ, Art. 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. The DD Form 2701 will be used for this purpose, if available. The victim/witness checklist, in appendix D, below, should be used by the VWL to ensure that victims and witnesses are notified of the services described in this chapter.

14-10. Rights of crime victims

a. As provided for in 42 USC 10601 and the sections that follow, and in DODI 1030.2, a crime victim has the following rights:

(1) The right to be treated with fairness, 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. Staff judge advocates will ensure that local policies and procedures are established to give crime victims the rights described above.

14-11. Training and publicity

a. Staff judge advocates will ensure that annual Victim/Witness Assistance Program training is provided to representatives of all agencies performing victim/witness assistance functions (JAs and legal, investigative and law enforcement personnel; chaplains; health care personnel; Family advocacy/services personnel; unit commanding officers and noncommissioned officers; and corrections/confinement facility personnel) within their GCM jurisdictions. At a minimum, training will cover victims' rights; available compensation through Federal, State, and local agencies; providers' responsibilities under the Victim/Witness Assistance Program; and requirements and procedures established by this chapter.

b. Staff judge advocates also will ensure that the provisions of this chapter are publicized to all military and civilian agencies providing victim/witness services and to commands within their jurisdictions. Staff judge advocates will ensure that the DOD Victim and Witness Bill of Rights is displayed in the offices of commanders and Army multidisciplinary agencies that provide victim/witness assistance and that victim/witness brochures and pamphlets are available at appropriate locations throughout their jurisdictions. Installation public affairs resources

should be used to obtain maximum publicity within the military community. Use of command policy letters endorsing the Victim/Witness Assistance Program is encouraged.

Section III Victim Service

14–12. Medical, financial, legal, and social services

a. Investigative or law enforcement personnel, the VWL, trial counsel, or other individuals with victim/witness assistance responsibilities under this chapter will inform the victim of a crime of the place where the victim may receive emergency medical care and social service support. When necessary, these personnel will provide appropriate assistance in securing such care. Victims suffering from or indicating injury or trauma will be referred to the nearest available medical facility for emergency treatment. When required for completion of criminal investigations, examination and treatment of civilian victims of assaults committed on Army installations may be provided without charge at the discretion of medical treatment facility (MTF) commanders (see AR 40–400). The MTF commanders will construe liberally their authority to waive charges unless inappropriate in view of the unique circumstances. Abused dependents of Service members who receive a dishonorable or bad conduct discharge or 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 (see 10 USC 1076(e)).

b. The VWL or other Government representative will assist victims of crime in obtaining appropriate financial, legal, and other social service support by informing them of public and private programs that are available to provide counseling, treatment, and other support to the victim, including available compensation through Federal, State, and local agencies. The VWL will assist the victim in contacting agencies or individuals responsible for providing necessary services and relief. Examples of assistance and services that may be available to victims, in addition to those available through MTFs, include the following:

- (1) Army Community Services Program (under AR 608–1).
- (2) Army Emergency Relief (under AR 930–4).
- (3) Legal Assistance (under AR 27–3).
- (4) The American Red Cross (under AR 930–5).
- (5) Chaplain Services (under AR 165–1).
- (6) Civilian community-based victim treatment, assistance, and compensation programs.

(7) For dependents of Service members who are victims of abuse by a military spouse or parent, payment of a portion of the disposable retired pay of the Service member under 10 USC 1408 or payment of transitional compensation benefits under 10 USC 1059.

(8) For families of Service members, transportation and shipment of household goods may be available even if the Service member receives a punitive or other than honorable discharge, under Volume 1, Joint Federal Travel Regulations, Chapter 5, available at [http://www.defensetravel.dod.mil/Docs/perdiem/JFTR\(Ch1-10\).pdf](http://www.defensetravel.dod.mil/Docs/perdiem/JFTR(Ch1-10).pdf).

c. Judge advocates will serve on the Sexual Assault Review Board (see AR 600–20).

d. When victims are not eligible for military services, or in those cases in which military services are not available, the VWL will provide liaison assistance in seeking any available nonmilitary services within the civilian community.

e. National Guard Bureau (NGB) is authorizing the implementation of a Special Victim Counsel (SVC). All personnel will refer to and use NGB or other authorized guidance regarding the detail and service of a SVC.

14–13. Stages and role in military criminal justice process

Victims should be advised of stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case. This information will be set forth in a Victim Information Packet (DD Form 2701 and DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime)), and should be further amplified, as required, by the VWL or trial counsel. For example, some offenses may be tried in U.S. Magistrate or U.S. District Court.

14–14. Notification and description of services provided to victims of crime

a. During the investigation and prosecution of a crime, the VWL, trial counsel, or other Government representative will provide a victim the earliest possible notice of significant events in the case, to include—

- (1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.
- (2) The apprehension of the suspected offender.

(3) The decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an investigation under ACMJ, Art. 32.

(5) The scheduling (date, time, and place) of each court proceeding that the victim is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The opportunity to consult with trial counsel about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim.

(9) The result of trial or other disposition.

(10) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(11) General information regarding the corrections process, including information about work release, furlough, probation, parole and other forms of release from custody, and the offender's eligibility for each.

(12) The right to request, through the VWL, trial counsel, or designee of the commander of the corrections facility to which the offender is assigned, notice of the matters set forth in subparagraph *b*, below.

(13) How to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations (under AR 15-130).

b. Upon a sentence to confinement, the trial counsel or a representative for the Government will—

(1) Formally inform the victim 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 with DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime).

(2) Ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status), in every case, regardless of election. One copy of DD Form

2704 will be given to the victim. One copy of the form will be forwarded to the commander of the gaining confinement

facility. *See* AR 27-10 for any additional applicable requirements.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

14-15. Consultation with victims

a. When appropriate, the trial counsel, VWL, or other Government representative will 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.

14-16. Property return and restitution

a. In coordination with criminal investigative agents and Government Appellate Division, SJAs or their designees will ensure that all non-contraband property that has been seized or acquired as evidence for use in the prosecution of an offense is safeguarded and returned to the appropriate person, organization, or entity as expeditiously as possible per AR 195-5 or AR 190-30, as applicable.

b. Victims who suffer personal injury or property loss or damage as a result of an offense should be

informed of the various means available to seek restitution. The provisions of ACMJ, Art. 139 may provide some relief if the property loss or damage is the result of a wrongful taking or willful damage by a member of the Armed Forces (care must be taken to ensure that ACMJ, Art. 139 investigations are conducted in a manner that does not interfere with any ongoing criminal investigations or courts-martial proceedings). Victims should also be informed of the possibility of pursuing other remedies, such as claims, private lawsuits, or any crime victim compensation available from Federal (for example, the Transitional Compensation Program for abused family members under 10 USC 1059) or civilian sources, and of appropriate and authorized points of contact to assist them. Examples include a local claims office, legal assistance or lawyer referral services, and State victim assistance or compensation programs.

c. Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under RCM 1107. The Army Clemency and Parole Board will also consider the appropriateness of restitution in clemency and parole actions.

Section IV Witness Services

14–17. Notification and description of services provided to witnesses

a. The trial counsel, VWL, or other Government representative will make reasonable efforts to notify witnesses and representatives of witnesses who are minors (to include legal guardians, foster parents, or other persons in lawful custody of minors or incompetent individuals), when applicable, and at the earliest opportunity, of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral (or the filing in a civilian court) or dismissal of charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an ACMJ, Art. 32 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 or other disposition.

(9) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(10) General information regarding the corrections process, including information about work release, furlough, probation, the offender's eligibility for each, and the witnesses' right to be informed of changes in custody status.

b. Witnesses should be advised of the stages in the military criminal justice system, the role that they can be expected to play in the process, and how to obtain additional information concerning the process and the case. This information will be set forth in a Victim and Witness Information Packet (DD Forms 2701, 2702, and 2703) and should be further amplified, as required, by the trial counsel, VWL, or designee.

c. Upon a sentence to confinement, the trial counsel or other representative of the Government will—

(1) Formally inform those witnesses adversely affected by the offender regarding post-trial procedures and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing DD Form 2703. Appropriate cases include, but are not limited to, cases where the life, well-being, or safety of the witness has been, is, or in the future reasonably may be, jeopardized by participation in the criminal investigative or prosecution process.

(2) Ensure the witness' election regarding notification is recorded on DD Form 2704 in every case, regardless of election. One copy of DD Form 2704 will be given to the witness. One copy of the form will be forwarded to the commander of the gaining confinement facility. See AR 27-10 for any additional applicable requirements.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

14–18. Limitations

The trial counsel, VWL, or other Government representative will determine, on a case-by-case basis, the

extent to which witnesses are provided the services set forth in sections IV and V of this chapter. For example, it may be unnecessary to provide some or all of these services to active duty military witnesses or to expert or character witnesses. Trial counsel or designee will apprise a witness' chain of command of the necessity for the witness' testimony (and the inevitable interference with and absence from duty). Ordinarily, however, doubt about whether to provide the foregoing information or services should be resolved in favor of providing them, especially when services have been requested by the witness.

Section V

Victim and Witness Services

14-19. Protection of victims and witnesses

a. Victim/witness intimidation. The SJA will ensure that victims and witnesses are advised that their interests are protected by administrative and criminal sanctions. In the criminal context, for example, 18 USC 1512 and 1513 make tampering with or retaliation against a victim or witness punishable under Federal law; intimidation and threats to victims or witnesses is punishable under ACMJ Art. 134. Obstruction or attempted obstruction of justice and subornation of perjury are also offenses under the ACMJ Art. 134. Victims and witnesses should be further advised that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities (for example, a commander, a SJA, the CID, a program manager, a trial counsel or a VWL), that their complaints will be promptly investigated, and that appropriate action will be taken. In the administrative context, the commander may provide victim protection by issuing a written order to the suspect not to contact the victim except when supervised by a member of the chain of command, or by revoking the suspect's pass privileges. Commanders should normally use DD Form 2873, Military Protective Order, when issuing a written no-contact order. Commanders should consult with their servicing judge advocate before taking administrative measures to protect a victim.

b. Victim/witness protection. In cases where the life, well-being, or safety of a victim or witness is jeopardized by his or her participation in the criminal investigation or prosecution process, the SJA will ensure that appropriate law enforcement agencies are immediately notified. Commanders, in conjunction with the law enforcement agency concerned, will promptly take, in appropriate circumstances, those measures necessary to provide reasonable protection for the victim or witness. These measures may include temporary attachment or assignment, or permanent reassignment, of military personnel, or in some cases the provision of State, other Federal, or foreign protective assistance. The trial counsel, VWL, or other Government representative will immediately notify the SJA whenever a victim or witness expresses genuine concern for his or her safety. The SJA should contact USACIDC for all victim and witness requests to be in the Federal Witness Protection program, and for fear of life transfers.

c. Separate waiting area. At courts-martial and 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 RCM 701(e) and at the request of the victim or other witness, a VWL or designee may act as an intermediary between a witness and representatives of the Government and the defense for the purpose of arranging witness interviews in preparation for trial. The VWL's role in arranging witness interviews is to ensure that witnesses are treated with courtesy and respect and that interference with their lives and privacy is kept to a minimum. This paragraph is not intended to prevent the defense or the Government from contacting potential witnesses not previously identified or who have not requested a VWL to act as an intermediary.

14-20. Notification to employers and creditors

On request of a victim or witness, the trial counsel, VWL, or other Government representative will inform an employer that the victim's or witness' innocent involvement in a crime or in the subsequent prosecution may cause or require his or her absence from work. In addition, if a victim or witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, suffers serious financial hardship, a Government representative will assist the victim or witness in explaining to creditors the reason for such hardship, as well as ensuring that legal assistance is available to Service members, retirees, and their Family members for this purpose.

14-21. Witness fees and costs

Witnesses requested or ordered to appear at investigations or courts-martial under ACMJ, Art. 32 may be entitled

to reimbursement for their expenses under ACMJ, Arts. 46 and 47; the RCM 405(g); and chapter 5, above. The VWL must be familiar with the provisions of these directives and appropriately advise and assist witnesses. Victims and witnesses should be provided assistance in obtaining timely payment of witnesses' fees and related costs. In this regard, coordination should be made with local finance officers for establishing procedures for payment after normal duty hours if necessary. (To the extent applicable the provisions contained herein will be adhered unless and/or until the Administrative Office of Courts provides otherwise).

14-22. Local services

The trial counsel, VWL, or designee will ensure that victims and witnesses are informed of, and provided appropriate assistance to obtain, available services such as transportation, parking, child care, lodging, and court-martial translators or interpreters.

14-23. Transitional compensation

Refer to AR 27-10 for possible Transitional Compensation Program benefits.

14-24. Requests for investigative reports or other documents

The SJA will ensure that victims' and witnesses' requests for investigative reports or other documents are processed under applicable Freedom of Information Act or Privacy Act procedures. 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

14-25. 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). The DD Form 2705 (Victim/Witness Notification of Inmate Status) may be used for this purpose.

d. On transfer of the offender, the Senior Official of the confinement facility should notify the gaining confinement facility of the victim's and/or witness' request by forwarding the completed DD Form 2704 with an information copy to the central repository.

e. Annually, no later than 31 January, the commander of the confinement facility will report to the DA central repository the number of victims and witnesses who were notified of changes in confinement status during the reporting period, and the total number of confinees on whom notification is required.

14-26. Reporting requirements and responsibilities

a. The ALNG-OSA is the central repository for tracking notice of the status of offenders confined in state confinement facilities and for tracking the following information (to the extent applicable the provisions contained herein will be adhered unless and/or until the Administrative Office of Courts provides otherwise, for additional provisions see AR 27-10):

(1) Number of victims and witnesses who received DD Form 2701 or DD Form 2702 from law enforcement or criminal investigative personnel;

(2) The number of victims and witnesses who were informed (as recorded on DD Form 2704 or otherwise) of their right to be notified of changes in confinee status;

(3) The number of victims and witnesses who were notified by confinement victim and witness assistance officials, using DD Form 2705, of changes in confinee status;

(4) The number of confinees, by Service, in Army confinement facilities as of 31 December of each year, about whom victim and witness notifications must be made.

(5) The number of victims and witnesses who received DD Form 2701 or 2702 from trial counsel, VWL or designee;

(6) The number of victims and witnesses who received DD Form 2703 from trial counsel, VWL or designee.

d. Staff judge advocates will obtain data for their reports from subordinate commands attached or assigned to their GCM jurisdiction for military justice purposes. Negative reports are required. The DD Form 2706 will be used for this purpose and submitted to the ALNG-OSJA.

14-27. Evaluation of Victim/Witness Liaison Program services

a. Staff judge advocates will ensure that each victim and witness in an incident that is prosecuted at a GCM or SPCM, or investigated pursuant to ACMJ, Art. 32, in those cases not disposed of by GCM or SPCM receives a victim/witness evaluation form. These forms may also be provided to other victims and witnesses.

b. Staff judge advocates will use DA Form 7568 (Army Victim/Witness Liaison Program Evaluation).

c. Evaluation forms will be reviewed locally by the SJA.

d. The evaluation form may be provided to victims and witnesses by hand, by mail or otherwise, but must be returned in an anonymous manner, for example, by providing a drop box away from the military justice section, or by providing a pre-addressed envelope or other anonymous means of return. The recipients of the evaluation form must be advised that the form will be returned in an anonymous manner and cannot be accepted in any other manner. The evaluation form will be accompanied by a cover letter under the signature of the SJA. The cover letter will thank the victim/witness for assisting in the prosecution, and emphasize the need for a response and the anonymous nature of the response.

Chapter 15

Military Justice Training

15-1. General

This chapter describes organization-structuring for required and optional military justice training.

15-2. Training organization

a. The Staff Judge Advocate/Command Judge Advocate is responsible for technical supervision of training in military justice of their assigned personnel. The SJA/CJA will also be responsible for conducting military justice training within their assigned units annually. The SJA/CJA will certify and send to the Senior Force Judge Advocate certification of military justice training.

b. The Senior Defense Counsel is responsible for technical supervision of training in military justice of their assigned personnel. The SDC will certify and send to the Senior Force Judge Advocate certification of military justice training.

15-3. Course development and instruction

a. Military qualifications standards for military justice training will conform with this regulation.

b. Staff and command judge advocates will provide technical assistance and supervision in the development of military justice course POIs not otherwise prescribed by higher authority.

Chapter 16 Complaints under Article 138

Section I General

16-1. Purpose

This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to ACMJ, Art. 138 by a member of the National Guard against a commanding officer. The ACMJ, Art. 138 states: “Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the office exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the TAG a true statement of that complaint, with the proceedings thereon.”

16-2. Applicability

This chapter applies to all members of the Armed Forces. Complaints from members of the National Guard is limited to matters concerning their military service.

16-3. Policy

a. Resolution of complaints. The ALNG policy is to resolve complaints at the lowest level of command and to provide adequate administrative procedures for such resolution. The ACMJ, Art. 138 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 Service member and the Commanding officer whom the Service member believes committed the wrong. If conventional measures are unsuccessful, the Service member may submit a request for redress under ACMJ, Art. 138 (see para 19-6, below).

Every reasonable measure should be taken to resolve complaints at this level.

(2) The principal responsibility for acting on a complaint under the ACMJ, Art. 138 lie with the officer exercising Courts-Martial jurisdiction over the respondent at the time of the alleged wrong.

(3) The action of the officer exercising Courts-Martial jurisdiction is reviewed at JFHQ-AL.

b. Right to complain. A member of the Armed Forces has a statutory right to submit a complaint under the ACMJ, Art. 138. Commanders will not restrict the submission of such complaints or retaliate against a Service member for submitting a complaint.

c. Complaint to be forwarded. Every complaint made under the ACMJ, Art. 138 will be expeditiously forwarded to the officer exercising Courts-Martial jurisdiction unless voluntarily withdrawn by the complainant.

d. Complainant not a participant. A Service member who submits a complaint under the ACMJ, Art. 138 does not have a right to participate in any ensuing procedures under this regulation. However, the Service member

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 obtain the relevant facts, a commanding officer is presumed to have acted properly.

16-4. 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 member of the Armed Forces who believes their commanding officer has wronged them. For many adverse actions, however, there are other, more specific channels and procedures to ensure the Service member has an adequate opportunity to be heard. Those specific procedures usually are more effective and efficient for resolving such matters, and procedures directed under ACMJ, Art. 138 should neither substitute for, nor duplicate, them. Thus, a complaint is generally not appropriate under this chapter if other procedures exist that provide the Service member 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 ACMJ, Art. 138 procedures when—

(1) Review is provided specifically by the ACMJ, or the action is otherwise reviewable by a court authorized by the ACMJ or by a military judge.

(2) It is taken pursuant to the recommendation of a board authorized by regulation at which the complainant was afforded substantially the rights of a respondent (such as AR 15–6).

(3) Military regulations specifically authorize an administrative appeal.

(4) It is a commander's recommendation or initiation of an action included in subparagraphs (1), (2), or (3) above. The fact that the wrong complained of could be redressed by the ABCMR (see AR 15–185) or the Army Discharge Review Board (AR 15–180) does not make ACMJ, Art. 138 procedures inappropriate.

b. Examples. Some examples of actions for which a review under ACMJ, Art. 138 is inappropriate include

(1) Matters relating to courts-martial, nonjudicial punishment, confinement, and similar actions taken pursuant to the ACMJ, the AMCM, or military criminal law regulations. However, a complaint concerning a vacation of suspended nonjudicial punishment is reviewable under ACMJ, Art. 138, procedures because there is no review by an authority superior to the officer vacating the punishment.

(2) Officer or enlisted elimination actions (see AR 135-178, 600–8–24 and AR 635–200).

(3) Whistleblower reprisal allegations reported under 10 USC 1034.

(4) Withdrawals of flying status (see AR 600–105).

(5) Appeals from findings of pecuniary liability (see AR 37–104–4 and AR 735–5 for examples).

(6) Appeals from administrative reductions in enlisted grades (see AR 600–8–19/ 135-178).

(7) Appeals from OERs (see AR 623–105) or enlisted evaluation reports (AR 623–205).

(8) Filing of adverse information (for example, administrative reprimand) in official personnel records (see AR 600–37).

c. Referral to alternate channels. When the officer exercising GCM jurisdiction receives a complaint under ACMJ, Art. 138 apparently involving an adverse action for which more specific channels and procedures are available, the officer will act on it as prescribed in paragraph 19–11, below. A decision to leave the matter to be processed in those alternate channels and to so advise the complainant (see para 19–11*b*(1), below) constitutes “proper measures for redressing the wrong complained of” within the meaning of ACMJ, Art. 138.

d. Inappropriate complaints. Complaints determined to be inappropriate for review must be forwarded to the Office of The Staff Judge Advocate (OSJA) NGAL-TAG-JAG for final action.

Section II

Making a Complaint

16–5. Request for redress

a. Request by the member. Before submitting a complaint under ACMJ, Art. 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 AR 27-10 figure 19–1, below.

(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.

b. Response by the commanding officer. A commanding officer receiving a request for redress submitted under this regulation will respond, in writing, in a timely manner so that the complainant will receive the response within 15 days. (Subparas 19–10*a* and 19–11*b*, both below, 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. Reserve component commanders who are not on active duty must respond to a request for redress, in writing, in a timely manner so that the complainant will receive the response within 60 days from receipt of the request for redress. This will allow sufficient time (two drill periods) for RC commanders who are not on active duty to respond to requests for redress.

16–6. Complaint

A member of the Armed Forces may submit a complaint under ACMJ, Art. 138 complaints for any act or omission by the member's commanding officer that the member believes to be a wrong (see para 19-4e, above), 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 (or 60 days from an RC commander), or an interim response containing the date of a final response that does not unreasonably delay the final response, may elect to treat that as a refusal of redress.

a. Form. Figures 19-2 and 19-3, below, contain sample formats for ACMJ, Art. 138 complaints.

(1) Be in writing and signed by the complainant.

- (2) Identify the complainant as a member of the Armed Forces.
 - (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 the subject of the complaint.
 - (6) Indicate the date a written request for redress was submitted to the commanding officer and either that:
 - (a) The request was refused in whole or in part and the date thereof, or
 - (b) An interim or final response was not received within 15 days.
 - (7) Include a statement that it is a complaint submitted under the provisions of ACMJ, Art. 138 and his 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 Courts-Martial jurisdiction has returned it as deficient (see para 19–10a, below), 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.
 - (3) In the case of a complainant that uses the mail as a means of delivery, the complaint will be considered to have been submitted on the date the complaint is received by the commander.
- c. Withdrawal.* The complainant may withdraw the complaint at any time before final action is taken at JFHQ-AL. 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 Courts-Martial jurisdiction, the complaint may be withdrawn by an oral request of the complainant.
 - (2) After receipt by the officer exercising Courts-Martial jurisdiction, the complainant must submit a written request to the officer in possession of the complaint.

16–7. Legal advice

a. Complainant. A member who desires to submit a complaint under the provisions of ACMJ, Art. 138 may

- (1) Consult a military lawyer for advice and assistance in drafting the complaint. Such advice will include whether, under the circumstance, ACMJ, Art. 138 complaints are authorized and appropriate. The member should also be advised of any other laws or regulations under which he may proceed to seek redress. In connection with ACMJ, Art. 138 complaints, a military lawyer will be provided only for such consultation and advice, but not to represent the member in any ensuing ACMJ, Art. 138 proceedings.

- (2) Consult or retain other legal counsel at no expense to the Government. Such counsel may attend any proceedings under this regulation that 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 a ACMJ, Art. 138 complaint is submitted, may obtain necessary legal advice from the commanding officer's servicing JA.

Section III

Action on the Complaint

16–8. Action by the person receiving the complaint

a. Forwarding. A superior commissioned officer who receives a complaint under the provisions of ACMJ, Art. 138 will promptly forward it to the officer exercising Courts-Martial jurisdiction. Any other person receiving a complaint (except the officer exercising Courts-Martial jurisdiction) will forward it to the complainant's immediate superior commissioned officer or to the officer exercising Courts-Martial 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.

16–9. Determination not required by officer exercising court-martial jurisdiction

a. Deficient complaint.

(1) If a complaint does not substantially meet the requirements of ACMJ, Art. 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 is forwarded to JFHQ- AL.

b. Waivers.

(1) Except as provided in (2) and (3), below, the officer exercising court-martial 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 a waiver is considered appropriate will be explained in the correspondence forwarding the complaint (see paras 19–11*b*(2)(*c*) or 19–11*d*, below).

(*a*) The complaint was not delivered to the 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 when the complaint was submitted (or in the case of a member of the National Guard of the United States, was not in military service).

(*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 military authority, or it did not adversely affect the complainant personally (see para 19–4*e*, above).

(*c*) The complaint does not adequately identify a respondent or the wrong complained of.

c. Transfer of complaint.

(1) Jurisdiction to act on an ACMJ, Art. 138 complaint lies with the officer exercising Court-Martial jurisdiction described in paragraph 19–4*d*, below. If the respondent has been transferred after the alleged wrong, the officer exercising Court-Martial jurisdiction may transfer action on the ACMJ, Art. 138 complaint to the first Court-Martial Convening Authority 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 Court-Martial jurisdiction.

(2) The Senior Force Judge Advocate (or that officer's designee to act on complaints under this chapter) may direct a transfer, under this paragraph.

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.

16–10. Determination required by officer exercising court-martial jurisdiction

Except when that officer's determination is not required on the ACMJ, Art. 138 complaint (see para 19–10, above), the officer exercising Court-Martial jurisdiction will take the following actions:

a. Examination into the complaint. The officer exercising Court-Martial 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 (see para *b*(2)(*c*) or subpara *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 19–5, above. Unless the officer exercising Court-Martial 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.

(3) The Court-Martial Convening Authority should describe the factual basis and reasoning for each finding in subparagraph (2), above.

b. Action on the complaint. The officer exercising Court-Martial jurisdiction must act personally on the ACMJ, Art. 138 complaints. This authority may not be delegated. After examination into the complaint is completed, such officer will take the first of the following actions that applies to the particular complaint:

(1) If the alleged wrong is of the type described in paragraph 19–5, above, unless the officer exercising Court-Martial 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 is already being considered in other official channels, if that is the case; or

(b) A more appropriate official channel is available to redress the alleged wrong. The officer will specify that channel, any applicable regulation under which the complainant may proceed, and any military 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 that appropriate redress is beyond such officer’s authority to provide, but that another Army commander or agency could provide appropriate redress, such officer will forward the following to the commander or agency with the necessary authority:

1. The documents described in subparagraphs 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 JFHQ-AL in accordance with subparagraph *d*, below.

c. Notice to the complainant. The officer exercising Court-Martial jurisdiction will notify the complainant in writing of the action taken on the complaint.

d. Forwarding complaint to Joint Forces Headquarters, Alabama National Guard. Upon completion of action on the complaint, the officer exercising Court-Martial jurisdiction (or the commander to whom the complaint was forwarded under b (2) (c), above) will forward the following to the Office of the Staff Judge Advocate (NGAL-TAG-JAG), JFHQ, 1720 Congressman W.L. Dickinson Dr., Montgomery AL 36109-3711:

(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 (see subpara *a*, above).

(3) A copy of the notice to the complainant (see subpara *c*, above).

(4) An endorsement or memorandum of transmittal—

(a) Indicating that the officer exercising Court-Martial jurisdiction (or the commander to whom the complaint was forwarded) personally acted on the complaint.

(b) Describing such officer’s action (see subpara *b*, above), and the reasons therefore.

(c) Explaining when applicable, explaining any waiver of deficiencies in the complaint (see para 19–10*b*, above) or inadequacy of established channels (see subpara b (1), above).

16–11. Action by Joint Forces Headquarters, Alabama

a. Upon receipt at JFHQ-AL, each ACMJ, Art. 138 file will be reviewed by OSJA (or that officer’s designee) on behalf of the SM. The OSJA 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 Court-Martial jurisdiction will be informed of the final disposition of the complaint.

Appendix A References

Section I Required Publications

AR 15-6

Procedures for Investigating Officers and Boards of Officers

AR 15-185

Army Board for Correction of Military Records

AR 25-50

Preparing and Managing Correspondence

AR 25-51

Official Mail and Distribution Management

AR 25-400-2

The Army Records Information Management System (ARIMS)

AR 27-1

Judge Advocate Legal Services

AR 27-3

The Army Legal Assistance Program

AR 27-26

Rules of Professional Conduct for Lawyers

AR 27-40

Litigation

AR 27-50

Status of Forces Policies, Procedures, and Information

AR 135-175

Officer Separations

AR 135-178

Enlisted Administrative Separations

AR 140-158

Enlisted Personnel Classification, Promotion, and Reduction

AR 190-29

Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrates or District Courts

AR 190-47

The Army Corrections System

AR 220-5

Designation, Classification, and Change of Status of Units

AR 335-15

Management Information Control System

AR 340-21

The Army Privacy Program

AR 600-8-2

Suspension of Favorable Personnel Actions (FLAGS)

AR 600-8-10

Leaves and Passes

AR 600-8-19

Enlisted Promotions and Reductions

AR 600-8-24/ (AR 135-175)

Officer Transfers and Discharges

AR 600-8-29

Officer Promotions

AR 600-8-104

Military Personnel Information Management/Records

AR 600-8-105

Military Orders

AR 600-20

Army Command Policy

AR 600-37

Unfavorable Information

AR 600-62

U.S. Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel

AR 614-100

Officers Assignment Policies, Details, and Transfers

DA Pam 27-7

Military Justice Handbook—Guide for Summary Court-Martial Trial Procedure

DA Pam 27-9

Military Judges' Benchbook

DOD 7000.14-R

Department of Defense Financial Management Regulation (Available at <http://www.dod.mil/comptroller/fmr/>.)

DODD 1030.1

Victim and Witness Assistance (Cited in para 14.) (Available at <http://www.dtic.mil/whs.directives/>.)

DODI 1030.2

Victim and Witness Assistance Procedures (Cited in paras 14.) (Available at <http://www.dtic.mil/whs/directives/>.)

DODI 5525.11

Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members (Available at <http://www.dtic.mil/whs/directives/>.)

AFI 51-201

Air Force Instruction, Administration of Military Justice (Available at www.e-publishing.af.mil.)

COMDINST M5810.1D

U.S. Coast Guard Military Justice Manual (Available at www.uscg.mil/legal/milwordversion.)

JAGMAN 0101

Manual of The Judge Advocate General, Navy (Available at <http://www.jag.navy.mil>.)

JFTR

Joint Federal Travel Regulations (Available at <http://www.defensetravel.dod.mil/perdiem/trvregs.html>.)

Section II

Related Publications

A related publication is additional information. The user does not have to read it to understand the publication. All U.S. Code statutes are available at <http://www.gpoaccess.gov/uscode/index.html>. All articles in the UCMJ are available at <http://www.army.mil/references/UCMJ>.

AR 1-211

Attendance of Military and Civilian Personnel at Private Organization Meetings

AR 10-5

Organization and Functions, Headquarters, Department of the Army

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 600–85

Army Substance Abuse Program (ASAP)

AR 608–18

The Army Family Advocacy Program

AR 623–205

Noncommissioned Officer Evaluation Reporting System

AR 630–10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 633–30

Military Sentences to Confinement

AR 735–5

Policies and Procedures for Property Accountability

DA Pam 27–17

Procedural Guide for Article 32b Investigating Officer

DA Pam 27–50

The Army Lawyer

DA Pam 27–173

Trial Procedure

DA Pam 611–21

Military Occupational Classification and Structure

DFAS–IN 37–1

Finance and Policy Implementation (January 2000) (Available at <http://www.asafm.army.mil/>.)

DODD 5525.07

Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes (Available at <http://www.dtic.mil/whs/directives/>.)

DODI 1342.24

Transitional Compensation for Abused Dependents (Available at <http://www.dtic.mil/whs/directives/>.)

MCM United States (2012 Edition)

Manual for Courts-Martial (Available at http://www.dod.mil/dodgc/jsc_business.html/.)

RCM

Rules for Courts-Martial

UCMJ

Uniform Code of Military Justice (Available at <http://www.army.mil/references/UCMJ/>.)

UCMJ, Art. 139

Redress of inquiries to property

10 USC 972

Members: effect of time lost

10 USC 802

Persons subject to this chapter

10 USC 1034

Protected communications; prohibition of retaliatory personnel action

10 USC 1059

Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

10 USC 1076a

Medical and dental care for dependents: general rule

10 USC 3013

Secretary of the Army

10 USC 1408

Payment of retired or retainer pay in compliance with court orders

10 USC 1565

DNA identification information: collection from certain offenders; use

18 USC 219

Officers and employees acting as agents of foreign principals

18 USC 871

Threats against President and successors to the Presidency

18 USC 1512

Tampering with a witness, victim, or an informant

18 USC 1513

Retaliating against a witness, victim, or an informant

18 USC 3401, 3402

Trial by United States magistrate judges

18 USC 3481

Competency of accused

28 USC 515

Authority for legal proceedings; commission, oath, and salary for special attorneys

28 USC 543

Special attorneys

28 USC 2101

Supreme Court; time for appeal or certiorari; docketing; stay

32 USC 327

Courts-martial of National Guard not in Federal Service; Convening Authority

USAM

U.S. Attorney's Manual (Available at <http://www.usdoj.gov/index.html>.)

Section III Prescribed Forms

Except where otherwise indicated below, the following forms are available as follows: AGO Forms are available at <http://www.al.ngb.army.mil/Resources/JAG/default.aspx>; DA Forms are available on the Army Electronic Library (AEL) CD-ROM (EM 0001) and the APD Web site (www.apd.army.mil); DD Forms are available from the OSD Web site (<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>); state court forms when applicable are available at <http://www.alacourt.gov>.

AGO Form 2627

Record of Proceedings Under Article 15, ACMJ

AGO Form 2627-1

Summarized Record of Proceedings Under Article 15, ACMJ

AGO Form 2627-2

Record of Supplementary Action Under Article 15, ACMJ

AGO Form 4430

State Military Department Report of Result of Trial

DA Form 4441

United States Army Trial Defense Service

DA Form 4916

Certificate of Service/Attempted Service

AGO Form 4917

Advice as to Appellate Rights

AGO Form 4919

Request for Final Action

AGO Form 5109

Request to Superior to Exercise Article 15, ACMJ, Jurisdiction

AGO Form 5110

Article 15-Reconciliation Log

AGO Form 5111

Summary Courts-Martial Rights Notification/Waiver Statement

AGO Form 5112

Checklist for Pretrial Confinement

DA Form 7568

Army Victim/Witness Liaison Program Evaluation

Section IV Referenced Forms

Except where otherwise indicated below, the following forms are available as follows: DA Forms are available on the APD Web site (<http://www.apd.army.mil>); DD Forms are available from the OSD Web site

(<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>).

DA Form 2

Personnel Qualification Record-Part I (Available through the normal forms supply channels.)

DA Form 2-1

Personnel Qualification Record-Part II

DA Form 31

Request and Authority for Leave

DA Form 268

Report to Suspend Favorable Personnel Actions (FLAG)

DA Form 1380

Record of Individual Performance of Reserve Duty Training

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 3180

Personnel Screening and Evaluation Record

AGO Form 3744

Affidavit Supporting Request for Authorization to Search and Seize or Apprehend

AGO Form 3745

Search and Seizure Authorization

DA Form 4137

Evidence/Property Custody Document

DA Form 4187

Personnel Action

AGO Form 454

Warrant of Attachment

AGO Form 455

Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence or of Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, ACMJ, and RCM 1109

AGO Form 458

Charge Sheet

AGO Form 490

Record of Trial

AGO Form 491

Summarized Record of Trial

AGO Form 2329

Record of Trial by Summary Court-Martial

AGO Form 2330

Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review

AGO Form 2331

Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General

DD Form 2698

Application for Transitional Compensation

DD Form 2701

Initial Information for Victims and Witnesses of Crime

DD Form 2702

Court-Martial Information for Victims and Witnesses of Crime

DD Form 2703

Post-Trial Information for Victims and Witnesses of Crime

DD Form 2704

Victim/Witness Certification and Election Concerning Inmate Status

DD Form 2705

Victim/Witness Notification of Inmate Status

DD Form 2706

Annual Report on Victim and Witness Assistance

DD Form 2873

Military Protective Order

PS Form 3800

Certified Mail Receipt

PS Form 3811

Domestic Return Receipt

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 Service member, consisting of the following: (1) notification, (2) hearing (that may be omitted if the Service member 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.

a. Statement of commanding officer.

(1) As your commander, I have disciplinary powers under Article 15 of the ACMJ. I have received a report that you violated the Alabama 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 AGO 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 ACMJ, 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 Service member to read items 1 and 2 of AGO Form 2627. Allow him or her to retain a photocopy of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it.

(2) Do you understand item 1? Do you understand the offense(s) you are reported to have committed

b. Response of Service member. Yes/No. If the Service member does not understand the offense(s), explain the offense(s) to him/her.

c. Statement of commanding officer. Do you understand item 2? Do you have any questions about your rights in these proceedings?

d. Response of Service member. Yes/No. *Note.* If the Service member 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: ACMJ, Art. 15; Ch. 3, AMCM, 2013; or contact the JA office.

e. Statement of commanding officer. There are some decisions you have to make—

(1) **Only if I am contemplating imposing restriction** will 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 I am not contemplating imposing restriction you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation.

(a) Evidence in defense is facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.

(b) Evidence in extenuation is circumstances surrounding the offense showing that the offense is not very serious.

(c) Evidence in mitigation is facts about you showing that you are a good Service member 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 Service member. Yes/No.

g. Statement of commanding officer.

(1) If you are not entitled to demand trial by court-martial and after you have presented your evidence, and I am convinced, beyond a reasonable doubt, that you committed the offense, I could then punish you. The maximum punishment I could impose on you would be (punishment). (See table 3–1, above, for maximum punishments.)

(2) You should compare this punishment with the punishment you could receive in a court-martial. (If the Service member 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 one year confinement (total forfeitures while confined), reduction to E1, Bad Conduct Discharge, Dismissal.

Note. Ch. 3, AMCM, 2013 lists for each punitive Article the punishments a court-martial may impose for violations of the various Articles of the ACMJ. The CO—

(a) May inform the Service member 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 2 months of confinement. A special court may not impose more than 6 months of confinement or restriction.

(b) Should not inform the Service member 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 Service member. Yes/No. If the Service member desires to talk to an attorney, arrange for the Service member to consult an attorney. The Service member should be encouraged to consult the attorney promptly. Inform the Service member that consultation with an attorney may be by telephone. The Service member should be advised that he or she is to notify you if any difficulty is encountered in consulting an attorney.

i. Statements of commanding officer.

(1) You now have 2 weeks/48 hours (if on orders or AT) to think about what you should do in this case. You may advise me of your decision at any time within the 2 week/48-hour period. If you refuse to sign that part of AGO 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 Service member 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 Service member does not make a decision within the specified time or refuses to complete or sign item 3 of AGO Form 2627, see paragraph 3–18f. When you resume the proceedings, begin at item 3, AGO Form 2627.

(2) I am contemplating imposing restriction; do you demand trial by court-martial?

(2a) I am not contemplating imposing restriction so you do not have the right to demand trial by court-martial. (Go to subparagraph k (2) below).

j. Response of Service member. Yes/No. (If the answer is yes, continue with next statement.)

k. Statements of commanding officer.

(1) Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed. (If the answer is no, continue with next statement.)

(2) An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated Service members of the chain of command, available witnesses, and a spokesperson, if designated, will be present. Do you request an open hearing?

l. Response of Service member. Yes/No.

m. Statement of commanding officer. Do you wish to be accompanied by a spokesperson?

n. Response of Service member. Yes/No.

o. Statement of commanding officer. Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

p. Response of Service member. Yes/No.

q. Statement of commanding officer. Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.

Note. The CO will—

(1) Wait until the Service member initials the blocks and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.

(2) If the answer regarding witnesses and evidence is yes and the Service member 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 Service member, terminate the proceedings, inform the Service member, and destroy all copies of AGO Form. If you are convinced that the Service member committed the offense(s) beyond a reasonable doubt and deserves to be punished, proceed to impose

punishment.

(3) If the Service member needs additional time to gather his or her evidence, give the Service member a reasonable period of time to gather the evidence. Tell the Service member when the proceedings will resume and recess the proceedings.

(4) If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the Service member's evidence. Ensure that the Service member has the opportunity he or she deserves to present any evidence. Ask the Service member, "Do you have any further evidence to present?" "If the evidence persuades you that you should not punish the Service member, terminate the proceedings, inform the Service member of your decision, and destroy all copies of AGO Form 2627. If you are still convinced that the Service member committed the offense(s) and deserves to be punished, impose punishment.

B-3. Imposition of punishment

Statement of commanding officer: I have considered all the evidence. I am convinced, beyond a reasonable doubt, that you committed the offense(s). I impose the following punishments: (announce punishment).

Note. After you have imposed punishment, complete items 4, 5, and 6 of AGO Form 2627 and sign the blank below item 6.

B-4. Appellate advice

Main paragraphs are required to have a title followed by either paragraph text or at least two subparagraphs.

Note. The CO will hand the AGO Form 2627 to the Service member.

a. Statement of commanding officer. Read item 6, which lists the punishment I have just imposed on you. Now read item 4, 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 are not guilty, i.e., that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 45 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 45 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 Service member. Yes/No.

c. Statement of commanding officer. Do you desire to appeal?

d. Response of Service member. Yes/No.

Note. If the answer is yes, go to note at *e*(2), below. If the answer is no, continue with next statement.

e. Statements of commanding officer.

(1) If you do not want to appeal, initial block "a" in item 7 and sign the blank below item 7.

Note. Now give the Service member 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 Service member. Yes/No. (If the answer is yes, go to note at *g*(1), below. If the answer is no, continue with next statement.)

g. Statements of commanding officer.

(1) Initial block "b" in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

Note. If the answer is yes, continue with next statement.

(2) If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by (specify a date 45 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 AGO Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). You are dismissed.

Appendix C

Attorney-Client Guidelines

These guidelines have been approved by The Alabama National Guard Staff Judge Advocate (ALNG-SJA) / Senior Force Judge Advocate. 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, ALNG-SJA/Senior Force Judge Advocate will develop a common position and policies for the guidance of all concerned.

C-1. Problem areas in general

a. Applicability of the attorney-client relationship rules to military practice generally. Military attorneys and counsel are bound by the law and the highest recognized standards of professional conduct. The DA has made the Army “Rules of Professional Conduct for Lawyers” (see AR 27-26), and the “Code of Judicial Conduct 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 Member 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 Service member in a court-martial, no former officer should expect to be retained by the Government to represent a Service member with whom that officer has developed an attorney-client relationship. It is inappropriate 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 Service member client to the fullest extent possible within the limits of the law and other directives. No information obtained in an attorney-client relationship may be used against the interests of the client except in accordance with the Army “Rules of Professional Conduct for Lawyers” (see AR 27-26).

c. Restrictions in exhausting legal and administrative remedies. Military attorneys will normally confine their activities to proceedings provided for in the ACMJ and Army regulations (see para C-2c, below). They will be guided by local policies as to the extent that a military defense counsel is allowed to handle other matters; for example, general legal assistance. The activities of USATDS counsel are governed by chapter 6, above.

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 Senior, ALTDS, or his or her delegate (see para 6-9, above), will ensure that co-accused are initially contacted by separate defense counsel. Once detailed to represent one of two or more co-accused, a military attorney will not represent another co-accused in the absence of a request for individual counsel processed under ACMJ, Art. 38(b); RCM 506; and this regulation.

(2) Requests for individual counsel will not be approved unless—

(a) Each co-accused to be represented by the same attorney has signed a statement reflecting informed consent to multiple representations.

(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 Regional Defense Counsel or ANG Senior Force Judge Advocate.

(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" (under AR 27-26).

(5) If additional defense counsel is required by a command due to the prohibition on multiple representations, the SJA concerned will contact the senior defense counsel supporting his or her jurisdiction who will act expeditiously on such requests according to USATDS procedures. Funding for USATDS counsel will be provided in accordance with chapter 6, above.

b. Relationship between military and civilian defense counsel.

(1) Military counsel will not recommend any specific civilian counsel. The best method is to show the accused a list of local attorneys. This list should be compiled by personnel in the SJA office and representatives of the local bar association. This will ensure that local attorneys who have no interest in such referrals will not appear on the list. The accused must be told that—

(a) This list is not exclusive.

(b) He or she is not limited to the services of a local attorney.

(c) The listing of an attorney is not necessarily an endorsement of the attorney's capability or character. The accused should be reminded that the responsibility for the choice is solely his or hers.

(2) The civilian counsel is expected to treat an associated military attorney as a professional equal. Military and civilian counsel are expected to treat each other with the respect and courtesy due their professional status.

(3) Where the conflict concerns defense tactics, the military counsel must defer to the civilian counsel if the accused has made the civilian counsel chief counsel. If counsel is co-counsel, the client should be consulted as to any conflicts between counsel. If the military counsel determines that the civilian counsel is conducting himself or herself contrary to the Army "Rules of Professional Conduct for Lawyers" (see AR 27-26) or violating the law, the military counsel should first discuss the problem with the civilian counsel. If the matter cannot be resolved, the military counsel has the duty to inform the accused of the civilian counsel's actions. The military counsel should inform the civilian counsel of his or her intention to discuss the matter with the accused. If the accused approves of the civilian counsel's conduct, the military counsel must inform the accused that he or she will—

(a) Inform the convening authority or request a ACMJ, Art. 39(a) session, whichever is appropriate.

(b) Ask to be relieved of his or her responsibilities as counsel.

c. Collateral civil court proceedings.

(1) Extent of military counsel's ability to initiate and prosecute such proceedings. Military defense counsel's ability to act in such matters is regulated by Army policy in AR 27-40.

(2) Responsibility with respect to writ of certiorari Alabama Rules of Appellate Procedure Rule 39 (Ala. R. App. P.). The military defense counsel is not required to prepare a writ of certiorari pursuant to Ala. R. App. P. 39 and is prohibited from doing so unless the provisions of AR 27-40 (when applicable) are followed. However, nothing prohibits the military counsel from explaining a pro se petition to the accused. 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 ACMJ, Art. 70. Generally, Regional Defense Counsel and/or State Senior Defense Counsel will designate who will represent an accused. 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

ACMJ.

(2) Termination. There are fewer objections to the administrative termination of an appellate defense attorney-client relationship than one at the trial level. The client has no right to select specific military appellate defense counsel. When the purpose for which the designation is made has been accomplished, the relationship terminates. The designation may be terminated earlier for administrative purposes.

(3) Relationship generally. There appears to be no necessity for face-to-face interviews in an appellate defense attorney-client relationship. Telephonic facilities are available at no cost to the client for communication between the appellant and his or her counsel. If the chief appellate defense counsel determines that a face-to-face interview is essential between either himself or herself or a military associate and the appellant, necessary travel funds will be provided, if available. General legal assistance is provided at the installation to which the appellant is assigned.

b. Extent of attorney's duties.

(1) *Collateral attacks in civilian courts.* The ACMJ, Art. 70 mandates that appellate counsel will represent the accused before the military appellate courts and will “perform such other functions in connection with the review of court-martial cases as” directed. The proper review of a court-martial is set out in the ACMJ, and full representation of the accused does not include collateral attacks in the Federal Courts except as permitted pursuant to AR 27–40.

(2) *Clemency petitions.* At the request of the accused, appellate defense counsel may submit clemency petitions to the proper Army authority.

(3) *Administrative proceedings in confinement facilities.* Military attorneys, assigned to the installations containing confinement facilities, have the responsibility to provide counsel to the confined accused when he or she is entitled to such counsel.

c. Conflict between appellate attorneys. Divergent views between military appellate defense counsel and retained civilian counsel must be worked out in the same manner as at trial (see paragraph C–2b(3), above). Military counsel assisting the chief appellate defense counsel must defer to the experience and professional views of the chief appellate defense counsel as an associate in a civilian law firm would defer to the senior partner. If irreconcilable differences appear, the assisting military counsel should ask to be relieved from the case. The chief appellate defense counsel has the discretion to grant this request.

Appendix D Victim/Witness Checklist

D-1. Victim checklist

a. Coordinate with the installation/community casualty working group and the U.S. Army Criminal Investigation Command survivor point of contact in death cases (see para 14-2c, above). The following provisions were maintained for potential applicability. Judge Advocates and Commanding Officers will need to coordinate with appropriate authorities to determine which provisions are and/or are not and when applicable and/or how to apply.

b. Ensure that victims are provided the name, location, and telephone number of the VWL (see para 14-8b, above).

c. Inform the victim of the right to receive the services described in chapter 14 (secs III and V) and provide a Victim and Witness Information Packet (see para 14-9b, above).

d. Inform the victim of the following rights (see para 14-10, above):

(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 and applicable.

(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 (see para 14-12a, above).

f. Inform abused dependent victims of the availability of medical care if the sponsor received a dishonorable or bad conduct discharge or dismissal for an offense involving abuse of the dependent victims (see para 14-23, above).

g. Assist the victim in obtaining financial, legal, and other social service support by informing the victim of the military and/or civilian programs that are available to provide counseling, treatment, and other support, to include available compensation through Federal, State, and local agencies (see para 14-12b, above).

h. Inform dependents of Service members 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 Service member under 10 USC 1408 or payment of transitional compensation benefits under 10 USC 1059 (see para 14-12b(7), above).

i. Inform a victim that families of Service members may be eligible for transportation and shipment of household goods regardless of the character of the Service member's discharge (para 14-12b(8), above).

j. Inform the victim of the various means available to seek restitution (under ACMJ, Art. 139; other remedies, such as claims, private lawsuits; or any State compensation programs) and of appropriate and authorized points of contact (see para 14-16b, above).

k. Inform a victim concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 14-13, above).

l. Inform a victim that the victim may receive notice of the following significant events in the case (see para 14-14a, above):

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender (on a case by case basis).

(3) The preferral or dismissal of charges.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a ACMJ, Art. 32 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 dates.
- (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 (see para 14–15, above):

- (1) Decisions not to prefer charges.
- (2) Decisions concerning pretrial restraint.
- (3) Pretrial dismissal of charges.
- (4) Negotiations of pretrial agreements and their terms.

n. Advise a victim that all no contraband property that has been seized or acquired as evidence will be safeguarded and returned as expeditiously as possible. Inform a victim of applicable procedures for requesting return of property (see para 14–16*a*, above).

o. Inform the victim that the victim's interests are protected by criminal sanctions; that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities; and that their complaints will be promptly investigated and appropriate action will be taken (see para 14–19, above).

p. Inform the victim that, within the guidelines of RCM 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 (see para 14–19*d*, above).

q. Use best efforts to apprise a victim's chain of command of the necessity for the victim's testimony, and the inevitable interference with and absence from duty (see para 14–18, above).

r. Inform a victim that, upon request, reasonable steps will be taken to inform an employer should the victim's innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 14–20, above).

s. Inform the victim that, upon request, reasonable steps will be taken to explain to a creditor when the victim, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 14–20, above).

t. Inform the victim of the availability of a separate waiting area (see para 14–19*c*, above).

u. Inform the victim of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 14–22, above).

v. Inform the victim that witnesses requested or ordered to appear at ACMJ, Art. 32 investigations or courts-martial may be entitled to reimbursement for their expenses under ACMJ, Arts. 46 and 47; RCM 405(g); DFAS-IN 37–1; and chapter 5 of this regulation (see para 14–21, above).

w. Assist the victim in obtaining timely payment of witnesses' fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (para 14–21, above).

x. For the trial counsel or designated Government representative.

- (1) No later than after trial if the offender is sentenced to confinement, advise the victim of the offender's place of confinement and the offender's projected minimum release date and determine whether the victim desires to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 14–14*b*, above).

- (2) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 14–14*b*, above)

y. Process the victim's requests for investigative reports or other documents under applicable Freedom of Information Act or Privacy Act procedures. 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 14–24, above).

z. Ensure that each victim in an incident that is prosecuted at a GCM, SPCM or investigated pursuant to ACMJ, Art. 32 in those cases not disposed of by GCM or SPCM, receives a DA Form 7568, Army Victim/Witness Liaison Program Evaluation form. These forms may also be provided to other victims

(see para 14–27, above).

D–2. Witness checklist

a. Coordinate with installation/community casualty working group and the U.S. Army Criminal investigation Command survivor point of contact in death cases (see para 14–2*c*, above).

b. Ensure that witnesses are provided the name, location, and telephone number of the VWL (see para 14–8*b*, above).

c. Inform each witness of the right to request the services described in this chapter (secs IV and V) and provide a Victim/Witness Information Packet (DD Forms 2701 and 2702) when necessary or requested (see para 14–9*b*, above).

d. Inform a witness concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 14–17*b*, above).

e. Inform the witness regarding notification of the following significant events in the case (see para 14–17, above):

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral or dismissal of charges.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an investigation under the provisions of ACMJ, Art. 32.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend, and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial.

(9) If the sentence includes confinement, the probable parole dates.

(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 14–19, above).

(13) Inform the witness that the VWL may act as an intermediary between a witness and representatives of the Government and the defense for the purpose of arranging witness interviews in preparation for trial, within the guidelines of RCM 701(e) and upon request (see para 14–19*d*, above).

(14) Use best efforts to apprise a witness’ chain of command of the necessity for the witness’ testimony, and the inevitable interference with and absence from duty (see para 14–18, above).

(15) Inform a witness that, upon request, reasonable steps will be taken to inform an employer should the witness’ innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 14–20, above).

(16) Inform the witness that, upon request, reasonable steps will be taken to explain to a creditor when the witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 14–20, above).

(17) Inform the witness of the availability of a separate waiting area (see para 14–19*c*, above).

(18) Inform the witness of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 14–22, above).

(19) Inform the witness that witnesses requested or ordered to appear at ACMJ, Art. 32 investigations or courts-martial may be entitled to reimbursement for their expenses under ACMJ, Arts. 46 and 47; RCM 405(g); DFAS-IN 37-1; and chapter 5 of this regulation (see para 14–21, above).

(20) Assist the witness in obtaining timely payment of witnesses’ fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (see para 17–21, above).

f. For the trial counsel or designated Government representative.

(1) No later than after trial if the offender is sentenced to confinement advise the witness of the

offender’s place of confinement and the offender’s projected minimum release date.

(2) In all cases, advise the witness regarding the right to be notified of the offender’s confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 14–17, above).

g. For the VWL or designated Government representative.

(1) In all cases, complete DD Form 2704 regarding the witness’ election regarding notification of changes in confinement status and give one copy to the witness; forward one copy of the form to the commander of the gaining confinement facility; and forward one copy of the form to the Army’s central repository, Army Corrections Command (DAPM–ACC), Victim/Witness Central Repository Manager, 150 Army Pentagon, Washington, DC 20310-0150 (see para 14–17, above).

(2) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 14–17b, above).

h. Process a witness’ request for investigative reports or other documents under applicable Freedom of Information or Privacy Act procedures (see para 14–24, above).

i. Ensure that each witness in an incident that is prosecuted at a GCM, SPCM or investigated pursuant to ACMJ, Art. 32, in those cases not disposed of by GCM or SPCM receives a DA Form 7568, Army Victim/Witness Liaison Program Evaluation form. These forms may also be provided to other witnesses (see para 14–27, above).

TABLE 3-3
Types of Training Periods and Assemblies (Table 3-3 NGR 350-1)

Type	No. of Training Periods	Days Paid	Retirement Points	Remarks
UTA	1	1	1	One period of not less than 4 hours
MUTA-2	2	2	2	Two UTAs conducted on 1 day or on 2 consecutive days
MUTA-3	3	3	3	Three UTAs conducted on 2 or 3 consecutive days
MUTA-4	4	4	4	Four UTAs conducted on 2, 3, or 4 consecutive days
MUTA-5	5	5	5	Five UTAs conducted on 3, 4 , or 5 consecutive days
MUTA-6	6	6	6	Six UTAs conducted on 3, 4, 5, or 6 consecutive days

Appendix F

Guidance on DNA, civilians, and jurisdiction during war and contingency operations

(For use of these provisions verify applicability and necessity.)

Appendix G

Internal control evaluation checklist

G–1. Function

The function covered by this checklist is compliance with military justice pursuant to SMDR 27–10, Military Justice, and AR 11–2, Managers’ Internal Control Program. The ALNG OSJA will manage these internal controls.

G–2. Purpose

The purpose of this checklist is to assist chiefs of military justice and staff judge advocates in evaluating

their key internal controls. It is not intended to cover all controls.

G–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

G–4. Test questions

a. Managing the imposition of nonjudicial punishment. If nonjudicial punishment was imposed—

(1) Did the command initiate a flag in accordance with AR 600–8–2?

(2) Was AGO Form 2627 completed properly?

(3) Was AGO Form 2627 recorded properly in either the Service member’s local file or the OMPF?

(4) Was the reconciliation log (AGO Form 5110) completed properly for all nonjudicial punishment within the appropriate jurisdiction?

(5) Was the AGO Form 2627 distributed properly?

(6) If applicable, was the AGO Form 2627 transferred or removed properly?

b. Managing the court-martial process.

(1) Does each level of command possess the appropriate level of authority to convene a court-martial?

(2) Has a convening order been produced?

(3) Have qualified trial counsel, defense counsel, and members been detailed and selected?

(4) If applicable, has the AGO Form 5112 and other appropriate documentation been prepared and retained to justify pretrial confinement?

(5) Did the command initiate a flag in accordance with AR 600–8–2?

(6) Was AGO Form 458 completed properly?

(7) Were charges forwarded properly?

(8) If applicable, was the ACMJ, Article 32 investigation completed and recorded properly?

(9) Do military justice supervisors regularly monitor witness travel expenses, and, where necessary, take corrective action to ensure travel dates are reliably established so that expenses are limited?

(10) Are witness travel payments made only to proper claimants with actual travel expenses?

(11) Were the AGO Form 4430, AGO Form 490, and AGO Form 491 prepared properly, and was it timely?

(12) Was the record of trial completed accurately, and was it timely?

(13) Were the record of trial, the AGO Form 4430, and other allied documents distributed properly and timely?

(14) Has a court-martial order been signed by the convening authority and distributed?

(15) Has a promulgating order been appropriately signed and distributed?

c. Detailing magistrates. Have military magistrates been detailed appropriately to provide sufficient coverage for the jurisdiction?

d. Reporting data. Has the ALNG Military Justice Report data been submitted and distributed?

e. Managing victim and witness assistance. (When applicable)

(1) Has the victim-witness program been trained and implemented in each GCMCA jurisdiction?

(2) Have victim-witness liaisons been appointed and trained?

(3) Have DD Forms 2701, 2702, 2703, and 2704 been completed and distributed properly?

(4) Have victim services been coordinated with medical, financial, legal, and social services?

(5) Have appropriate victim and witness notifications been made before, during, and after a court-martial?

(6) Have witness fees and costs been reimbursed? (Where applicable)

(7) Do military justice supervisors oversee and reconcile witness fees and costs with local finance personnel?

(8) If applicable, has transitional compensation been provided to a victim?

(9) Has DA Form 7568 been properly completed and distributed?

f. Paralegals and judge advocates. Have paralegals and JAs been appropriately trained and prepared for processing military justice actions?

g. Complaints under ACMJ, Article 138.

(1) Have complaints been forwarded to the appropriate GCM authority as required?

(2) Have complaints deemed to be inappropriate been answered and referred appropriately?

(3) Have all appropriate complaints been answered?

(4) If applicable, has the complaint been forwarded to Department of the Army?

h. Federal court considerations. Have reports been prepared and submitted concerning prosecution of criminal offenses in federal court?

j. Court Reporter Program.

(1) Are court reporters properly trained and detailed?

(2) Are court reporters attaining the performance standard metric?

(3) Is the court reporter productivity report properly and timely completed and distributed?

(4) Are court reporters properly equipped?

k. Jurisdiction and court-martial considerations. Are appropriate procedures in place to implement the military extraterritorial jurisdiction act or to court-martial pursuant to UCMJ, Art. 2(a)(10)?

G-5. Supersession

No previous internal control evaluation exists for this program.

G-6. Comments

Help make this a better tool for evaluating management controls. Submit comments to the Alabama National Guard Office of the Staff Judge Advocate, 1720 Congressman W.L. Dickinson Drive, Montgomery, AL 36109-0711.

Appendix H

Implementation Authority

In Accordance With the provisions of Article 149 of the Alabama Code of Military Justice (ACMJ), The Adjutant General of the Alabama National Guard and the Governor of the state of Alabama approve and adopt these implementing guidelines, Alabama Manual for Courts-Martial (AMCM) and State Military Department Regulation (SMDR) 27-10, promulgated by The Adjutant General in accordance with Section 31-2-58, Code of Alabama 1975.

Glossary

Section I Abbreviations

ABCMR

Army Board for Correction of Military Records

ACMJ

Alabama Code of Military Justice

ACOM

Army command

AD

Active duty

ADT

Active duty for training

AFI

Air Force instruction

AFTP

Additional Flight Training Period

AGR

Active guard reserve

AKO

Army Knowledge Online

ALNG

Alabama National Guard

AR

Army regulation

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

Art.

Article

ASCC

Army service component command

ASI

Additional skill identifier

AT

Annual training

BCD

Bad-conduct discharge

CD/DVD

Compact disc/digital video disc

CID

Criminal Investigation Command

CMIF

Career management individual file

CMO

Court-martial order

CMMRP

Court-martial Military Review Panel

COCOM

Combatant commander

COMDTINST

Commandant, U.S. Coast Guard instruction

CONUS

Continental United States

CONUSA

Continental United States Armies

CPL

Corporal

CR

Court reporter

DA

Department of the Army

DASEB

Department of the Army Suitability Evaluation Board

DCAP

Defense Counsel Assistance Program

DCO

Designated commanding officer

DCS, G-1

Deputy Chief of Staff, G-1

DJMS

Defense Joint Military Pay System

DOD

Department of Defense

DODD

Department of Defense directive

DODI

Department of Defense instruction

DOJ

Department of Justice

DRU

Direct reporting unit

ETS

Expiration term of service

FAO

Finance and accounting office

GCM

General court-martial

GCMCA

General court-martial convening authority

HQ

Headquarters

HQDA

Headquarters, Department of the Army

HRC

Human Resources Command

HRC–St. Louis

Human Resources Command–St. Louis

IDT

Inactive duty training

IMCOM

Installation Management Command

JA

Judge advocate

JAGC

Judge Advocate General's Corps

JAGCNet

Judge Advocate General's Corps Network

JAGMAN

Manual for The Judge Advocate General, Navy

JALS

Judge Advocate Legal Service

MCM

Manual for Courts-Martial

MCU

Multiple component units

MDW

Military District of Washington

MJM

U.S. Coast Guard Military Justice Manual

MOS

Military occupational specialty

MOU

Memorandum of Understanding

MP

Military police

MPD

Military personnel division

MRE

Military Rules of Evidence (found in the MCM)

MSC

Major subordinate command

MTF

Medical treatment facility

MTOE

Modification table of organization and equipment

MUTA

Multiple Unit Training Assembly

NCO

Noncommissioned officer

OCONUS

Outside continental United States

OER

Officer evaluation report

OMPF

Official military personnel file

OSJA

Office of the Staff Judge Advocate

OTJAG

Office of The Judge Advocate General

PSC

Personnel Service Company

RAM

Random access memory

RCM

Rules for Courts-Martial

RDC

Regional defense counsel

RFGOS

Resignation for the good of the Service

SA

Secretary of the Army

SAUSA

Special Assistant U.S. Attorney

SCM

Summary court-martial

SDC

Senior defense counsel

SECDEF

Secretary of Defense

SFC

Sergeant first class

SGT

Sergeant

SJA

Staff judge advocate

SOFA

Status of forces agreement

SPC

Specialist

SPCM

Special court-martial

SPCMCA

Special court-martial convening authority

SROTC

Senior Reserve Officers' Training Corps

SSN

Social security number

TCAP

Trial Counsel Assistance Program

TDA

Table of distribution and allowances

TDS

Trial Defense Service

TDY

Temporary duty

TJAG

The Judge Advocate General

TJAGLCS

The Judge Advocate General's Legal Center and School

TRADOC

Training and Doctrine Command

UCMJ

Uniform Code of Military Justice

USACCA

U.S. Army Court of Criminal Appeals

USACIDC

U.S. Army Criminal Investigation Command

USALSA

U.S. Army Legal Services Agency

USAR

U.S. Army Reserve

USARC

U.S. Army Reserve Command

USATDS

U.S. Army Trial Defense Service

USC

United States Code

USMA

U.S. Military Academy

UTA

Unit Training Assembly

VWL

Victim/witness liaison

Section II Terms**Active duty**

Full-time duty in the active military Service of the United States including full-time training duty, annual training duty, and attendance, while in the active military Service, at a school designated as a Service school by law or by the Secretary of the Army.

Admonition

A warning or reminder given to an offender to deter repetition of a type of misconduct and to advise the offender of the consequences that may flow from a recurrence of that misconduct.

Chief circuit judge

The senior military judge in a judicial circuit, or other judge designated by the chief trial judge.

Chief Judge of the Army Court of Criminal Appeals

An appellate military judge of the U.S. Army Court of Criminal Appeals who is designated as Chief Judge of that court by TJAG.

Inactive duty training

Duty prescribed for Reserves by the Secretary of the Army pursuant to 37 USC 206 or any other provision of law and special additional duties authorized for Reserves by an authority designated by the Secretary of the Army and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. Training or duty other than active duty (ADT, ADOS, AT and AGR), with or without pay, authorized by Federal law for units or members of The ARNG In state status (as opposed to a Federal or State active duty status) under title 32, U.S.C., section 502(a)(1). This includes UTA, multiple unit training assemblies (MUTA), ATA, AUTA, attendance at USAR schools, and performance of Equivalent Training.

Judicial circuit

One or more GCM jurisdictions, or the geographical area wherein the headquarters of such jurisdictions are situated, as designated by TJAG.

Military judge

A JA officer who has been certified by TJAG as qualified to preside over GCMs and/or SPCMs.

Military Judge Program

A system in which military judges are designated and made available for detail as judges of GCMs and SPCMs.

Mitigation

A reduction in either the quantity or quality of a punishment, its general nature remaining the same.

Prefer charges

The act of bringing charges against another party.

Reprimand

An act of formal censure that reproves or rebukes an offender for misconduct.

Reserve component

That part of the United States Army consisting of the Army National Guard of the United States and the United States Army Reserve.

Unit Training Assembly (UTA)

An authorized and scheduled IDT period of not less than 4 hours duration. UTAS are authorized pursuant to title 32, U.S.C., section 502, and may be conducted with or without pay.