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DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
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IN REPLY REFER TO
JAGINST 5800.7E
Ser 13/3JM11420.07
20 JUN 07

JAG INSTRUCTION 5800.7E

From: Judge Advocate General

Subj: MANUAL OF THE JUDGE ADVOCATE GENERAL

Ref: (a) 5 U.S.C. § 301
(b) 10 U.S.C. § 801-940
(c) Manual for Courts-Martial (MCM)

Encl: (1) JAGMAN
(2) Summary of Changes

1. Purpose. To promulgate the Manual of the Judge Advocate General (JAGMAN) contained in enclosure (1), as authorized by the Secretary of the Navy.

2. Cancellation. JAG Instruction 5800.7D of 22 March 2004 is hereby cancelled.

3. Scope. The JAGMAN is applicable throughout the Department of the Navy (DON) and contains regulations of DON that are issued under the authority of references (a) through (c) and other statutes and regulations. Enclosure (1) is a complete revision of the previous JAGMAN and should be read in its entirety. Enclosure (2) is a summary of significant changes.

4. Availability. The JAGMAN may be accessed and downloaded from Navy Knowledge Online (https://wwwa.nko.navy.mil) at the Judge Advocate General's community portal, and on the official JAG Corps website, http://www.jag.navy.mil/JAG Reading Room.

5. Action. The JAGMAN is effective as of the date of this instruction. Recommended changes should be forwarded to the Office of the Judge Advocate General, Administrative Law Division (Code 13), 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

BRUCE MacDONALD

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MANUAL
OF THE
JUDGE ADVOCATE GENERAL
(JAGMAN)

Office of the Judge Advocate General
Department of the Navy
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PREFATORY NOTES

1. The Manual of the Judge Advocate General may be cited as "JAGMAN, 0101a(1)," "JAGMAN, A-1-b," or "JAGMAN, Chapter II."

2. Forms, certain reference material, and technical guides are located in the Appendices, which are keyed by section number to the relevant chapter.

3. The words "Navy" and "Naval" as used in this Manual include the Marine Corps, except where the context indicates differently.

4. The Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 2002, are referred to as "UCMJ" and "MCM" respectively in this Manual.

5. The Military Rules of Evidence and Rules for Court-Martial are referenced to as "M.R.E." and "R.C.M." respectively in this Manual.

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CHAPTER I

REGULATIONS IMPLEMENTING AND SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

0101 SCOPE

a. The Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM), authorize "the Secretary concerned" or "the Judge Advocate General concerned" to prescribe regulations implementing or supplementing certain provisions of the UCMJ or the MCM. This Chapter provides those regulations and additional regulations relating to military justice.

b. Part A contains regulations and procedures governing nonpunitive corrective measures. Part B contains regulations and procedures relating to nonjudicial punishment. Part C pertains to trial by court-martial. It is divided into three subparts, concerning the pretrial, trial, and post-trial stages of the court-martial process. Part D contains miscellaneous provisions, including a table of cross-references between this Chapter and corresponding provisions of the MCM.

PART A -- NONPUNITIVE MEASURES

0102 NONPUNITIVE ADMINISTRATIVE MEASURES GENERALLY

Commanding officers (COs) and officers in charge (OICs) are authorized and expected to use administrative corrective measures to further the efficiency of their commands or units. See R.C.M. 306(c)(2), MCM. These measures are not to be imposed as punishment for any military offense(s). They may be administered either orally or in writing. They generally fall into three areas: extra military instruction, administrative withholding of privileges, and nonpunitive censure.

0103 EXTRA MILITARY INSTRUCTION

a. Definition. Extra military instruction (EMI) is defined as instruction in a phase of military duty in which an individual is deficient, and is intended for and directed towards the correction of that deficiency. It is a bona fide training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. It may be assigned only if genuinely intended to accomplish that result. It is not to be used as a substitute for judicial (court-martial) action or nonjudicial punishment (NJP), and must be logically related to the deficiency in performance for which it was assigned.

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b. Limitations. EMI shall be conducted within the following limitations:

(1) EMI normally will not be conducted for more than 2 hours per day.

(2) EMI may be conducted at a reasonable time outside normal working hours. Reserve component personnel on inactive duty training, however, may not be required to perform EMI outside normal periods of inactive duty training.

(3) EMI will not be conducted over a period that is longer than necessary to correct the performance deficiency for which it was assigned.

(4) EMI should not be conducted on the member's Sabbath.

(5) EMI will not be used for the purpose of depriving the member of normal liberty to which the member is otherwise entitled. A member who is otherwise entitled thereto may commence normal liberty upon completion of EMI.

(6) Authority to assign EMI that is to be performed during normal working hours is not limited to any particular grade or rate, but is an inherent part of that authority over their subordinates that is vested in officers and noncommissioned/petty officers in connection with duties and responsibilities assigned to them. This authority to assign EMI that is to be performed during normal working hours may be withdrawn by any superior if warranted.

(7) Authority to assign EMI to be performed after normal working hours is vested in the CO or OIC. Such authority may be delegated, as appropriate, to officers and noncommissioned/ petty officers, in connection with duties and responsibilities assigned to them, only if authorized by regulations of the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate. See OPNAVINST 3120.32 (series).

0104 ADMINISTRATIVE WITHHOLDING OF PRIVILEGES

a. Privilege. A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld as administrative corrective measures are: special liberty; exchange of duty; special command programs; access to base or ship libraries, base or ship movies, or enlisted or officers' clubs; base parking; and base or ship special services events. It may also encompass the withholding of special pay, as well as commissary and exchange privileges, provided such withholding complies with applicable rules and regulations and is otherwise in accordance with law. In all instances, unless properly delegated, final authority to withhold a privilege, however temporary, must ultimately rest with the level of authority empowered to grant that privilege.

b. Deprivation of liberty. Deprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal. Therefore, except as the specific result of punishment imposed under Article 15, UCMJ, or as the result of the sentence of a court-martial, it is illegal to deny to any subordinate normal liberty, or privileges incident thereto, as punishment for any offense, or to take action which has the effect of denying

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a subordinate normal liberty (e.g. seizing an individual's military ID card, except when taken temporarily to determine the appropriateness of taking lawful measures to deny liberty). Lawful deprivation of normal liberty, however, may result from other lawful actions such as authorized pretrial restraint, or deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of the foreign relations of the U.S., or as a result of international legal hold restriction. Moreover, it is necessary to the efficiency of the Naval service that official functions be performed and that certain work be accomplished in a timely manner. It is, therefore, not a punishment when persons in the Naval service are required to remain on board and be physically present outside of normal working hours for work assignments that should have been completed during normal working hours, for the accomplishment of additional essential work, or for the achievement of the currently required level of operational readiness.

0105 NONPUNITIVE CENSURE

a. General. "Censure" is a statement of adverse opinion or criticism of an individual's conduct or performance of duty expressed by a superior in the member's chain-of-command. Censure may be punitive or nonpunitive. See section 0114 regarding punitive censure. Censure does not include adverse comments in reports of fitness or performance evaluations, letters of instruction, or administrative remarks entries documenting factual matters such as counseling. Proper use of adverse matter that is not censure is governed by Department of the Navy (DON) regulations and applicable service directives, such as the Naval Military Personnel Manual and the Marine Corps Individual Records Administration Manual.

b. Nonpunitive censure. Nonpunitive censure is provided for in R.C.M. 306(c)(2), MCM. Nonpunitive censure may be issued by any superior in the member's chain-of-command, and may be either oral or in writing. A sample nonpunitive letter is at Appendix A-1-a.

(1) A nonpunitive letter is not considered punishment; rather, the letter is issued to remedy a noted deficiency in conduct or performance of duty. The contents of a nonpunitive letter are not limited to, but may include the following: identification of conduct or performance of duty deficiencies, direction for improvement, language of admonishment, identification of sources of assistance, outline of corrective action, and the consequences of failing to correct the deficiencies.

(2) A nonpunitive letter will be kept a personal matter between the member and the superior issuing the nonpunitive letter. Other than Secretarial letters of censure (see section 0114), the letter may not be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, quoted in or appended to fitness reports, included as enclosures to investigations pursuant to this Manual or to other investigations, or otherwise included in official departmental records of the recipient.

(3) The facts underlying a nonpunitive letter may be used to support a detachment for cause proceeding, for relief of command, or to support a negative endorsement. If the member submits a rebuttal to those facts

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alleging inadequate counseling or a failure to warn of deficiencies, a copy of the nonpunitive letter may be included in the correspondence forwarding the member's rebuttal. Under such circumstances, a nonpunitive letter may properly be included in the official service record of the member upon filing of the complete correspondence under the provisions of applicable service regulations. The fact of issuance of a nonpunitive letter may not be mentioned in a fitness report but the underlying facts may be included.

PART B -- NONJUDICIAL PUNISHMENT

0106 AUTHORITY TO IMPOSE

a. Commander or CO. Any commander or CO, including a CO as designated pursuant to subsection d, and any officer empowered to convene general and/or special courts-martial, may impose nonjudicial punishment upon officers and enlisted persons of the command. This authority to impose nonjudicial punishment extends to Reserve commanders or COs on active duty or inactive duty training. "CO" includes a commissioned warrant officer exercising command. Marine Corps COs are titled as Commandant, Commander, Commanding General, CO, Director, and Inspector-Instructor. Other titles used to designate Marine Corps commanders shall be made only with the specific approval of the Commandant of the Marine Corps.

b. Office in Charge. Any commissioned officer who is designated as OIC of a unit by: departmental orders; tables of organization; manpower authorizations; orders of a flag or general officer in command (including one in command of a multiservice command to which members of the Naval service are attached); or orders of the senior officer present, and any OIC designated as a special court-martial convening authority may impose upon enlisted persons assigned to the unit admonition or reprimand and one or more of the punishments listed in paragraph 5b(2)(A)(i) to (vi) of Part V, MCM.

c. Principal assistant. With the express prior written approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, a flag or general officer in command may delegate all or a portion of his powers under Article 15, UCMJ, to a senior officer on his staff who is eligible to succeed to command in case of absence of such officer in command. To the extent of the authority thus delegated, the officer to whom such powers are delegated shall have the same authority as the officer who delegated the powers.

d. Multiservice commander or OIC. A multiservice commander or OIC to whose staff, command, or unit members of the Naval service are assigned may impose nonjudicial punishment upon such individuals. A multiservice commander, alternatively, may designate, in writing, one or more Naval units, and shall for each such Naval unit designate a commissioned officer of the Naval service as CO for the administration of discipline under Article 15, UCMJ. A copy of any such designation by the commander of a multiservice command shall be furnished to the Chief of Naval Personnel and to the Office of the Judge Advocate General (OJAG) (Code 20) or the Commandant of the Marine Corps (JAM), as appropriate.

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e. Withholding of nonjudicial punishment authority. Unless specifically authorized by the Secretary of the Navy, COs of the Navy and Marine Corps shall not limit or withhold the exercise by subordinate commanders of any disciplinary authority they might otherwise have under Article 15, UCMJ; but see section 0108.

0107 JURISDICTION

a. Individual

(1) General rule. When nonjudicial punishment is imposed, the accused must be a member of the command or of the unit of the officer imposing the punishment. A member is "of the command," or "of the unit," if assigned or attached thereto. A member may be "of the command," or "of the unit," of more than one command or unit at the same time and, consequently, be subject to the nonjudicial punishment authority of both commanders. For example, members assigned to or attached to commands or units for the purpose of performing temporary duty (TDY) are subject to the nonjudicial punishment authority of the commanders of both the parent and TDY commands. Similarly, members assigned or attached to a detachment under the operational control of another command or unit by virtue of operational orders, or other authorized means, are subject to the nonjudicial punishment authority of the commanders of both the parent and supported units. Superior operational or administrative commanders may exercise nonjudicial punishment authority upon any subordinate member in their chain-of-command. For purposes of this section, all members of units responsible to the superior commander are considered "of the command." Additionally, any general or special court-martial convening authority who has charges against the accused properly before him for disposition at a court-martial may impose nonjudicial punishment upon the accused.

(2) Issuance of letter of censure to party before fact-finding body. A person who has been designated a party before a fact-finding body convened under this Manual (see Chapter II) remains thereafter "of the command" of the unit or organization to which assigned or attached at the time of such designation for the purpose of imposition of the sole nonjudicial punishment of a punitive letter, even though for other purposes he may have been assigned or attached to another command before such letter was delivered to him. This status terminates automatically when all action on appeal has been completed respecting the letter of admonition or reprimand.

(3) Action when accused is no longer with command. Except as provided in subsection a(2), if the accused is no longer assigned to or attached to the unit at the time nonjudicial punishment is to be imposed, the alleged offense should be referred for appropriate action to a competent authority in the chain-of-command over the individual concerned.

b. Over Reserve component personnel on active duty or inactive duty training. A member of a Reserve component on active duty or inactive duty training is subject to the UCMJ. Such members are not, by virtue of termination of a period of active duty or inactive duty training, relieved from amenability to jurisdiction of the UCMJ for offenses committed during such periods of active duty or inactive duty training and may be ordered to

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active duty for disciplinary proceedings. See section 0123 regarding procedures for ordering to active duty and section 0123 regarding release from active duty of members ordered to active duty for disciplinary proceedings.

0108 LIMITATION ON IMPOSITION OF NONJUDICIAL PUNISHMENT

a. Units attached to ships. The CO or OIC of a unit attached to a ship of the Navy for duty will while the unit is embarked therein, refrain from exercising his powers to impose nonjudicial punishment, unless permitted under subsection a(1) of this section. All such matters will be referred to the CO of the ship for disposition.

(1) This policy is a necessary corollary to the latter's overall responsibility for the safety, well being, and efficiency of the ship. Nevertheless, the CO of a ship of the Navy is authorized to determine whether, and under what circumstances, he may desire to permit a CO or OIC of a unit attached to that ship, while embarked therein, to exercise nonjudicial punishment authority. The CO of a ship of the Navy may, for example, permit a CO or OIC of a unit attached to and embarked in the ship to exercise nonjudicial punishment authority. Certain types of offenses, or offenses committed by certain categories of personnel, may nonetheless be required to be referred to the CO of the ship for disposition.

(2) This policy shall not apply to Military Sealift Command vessels operating under a master, nor does it apply where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the officer in command of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the CO of the ship, including disciplinary authority, over all personnel of the Naval service embarked. In the case of units embarked for transportation only, however, the CO of the ship should take disciplinary action under the UCMJ over members of such embarked units only in unusual cases concerning incidents occurring on board the ship.

b. Cases previously tried in civil courts. See section 0124 for rules governing nonjudicial punishment in cases previously adjudicated in domestic or foreign criminal courts.

c. Right to demand trial. A person in the Navy or Marine Corps who is attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of nonjudicial punishment, see Article 15, UCMJ.

(1) For purposes of this section, the term "attached to or embarked in a vessel" means that the person is assigned or attached via written or oral orders, either permanent or temporary, to a vessel, or is on board for passage, or is assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regular organized body. The orders may apply individually to the person, or they may apply to the unit of which the person is a member.

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(2) No one may be ordered to a vessel solely for the purpose of limiting the ability to demand trial by court-martial in lieu of nonjudicial punishment.

0109 ADVICE TO ACCUSED PRIOR TO IMPOSITION OF NONJUDICIAL PUNISHMENT

a. Pre-NJP advice

(1) Prior to the imposition of nonjudicial punishment, the CO or OIC shall ensure that the individual concerned is fully advised of all applicable legal rights and that other required action is taken prior to the hearing; see section 0110 if nonjudicial punishment is to be based on the report of a fact-finding body. There is no right for an accused to consult with counsel prior to nonjudicial punishment; however, COs are encouraged to permit an accused to so consult subject to the immediate availability of counsel, the delay involved, and operational commitments or military exigencies. Failure to provide the opportunity for an accused to consult with counsel prior to nonjudicial punishment does not preclude the imposition of nonjudicial punishment; it merely precludes the admissibility of the record of nonjudicial punishment in aggravation at a later court-martial, unless the accused was attached to or embarked in a vessel at the time of the imposition of nonjudicial punishment. The status of the accused (see subsection b) and the potential use of the record (see subsections c and d) should be considered in determining whether to utilize Appendix A-1-b, Appendix A-1-c, or Appendix A-1-d.

(2) A service member having obligated service arising from receiving advanced education assistance must be advised prior to electing nonjudicial punishment that, if subsequently separated for misconduct, he may be required to reimburse the U.S. for the cost of advanced education assistance not repaid by active duty service, as specified in the written agreement entered into with the Government prior to accepting advanced education assistance; see section 0171 and Appendix A-1-r.

b. Accused attached to or embarked in a vessel. Appendix A-1-b is the Accused's Notification of Rights for use only in circumstances when an accused is attached to or embarked in a vessel. The record of nonjudicial punishment can be used in aggravation in the event of a later court-martial conviction for other offenses.

c. Accused not attached to or embarked in a vessel; Record cannot be used in aggravation in event of later court-martial unless lawyer serves as personal representative. Appendix A-1-c is an Accused's Notification of Rights that is for use if either the officer who may impose nonjudicial punishment does not intend any record of captain's mast/office hours to be used in aggravation in the event of a later court-martial conviction for other offenses, or if a personal representative, who is a civilian or military lawyer, appears at the captain's mast/office hours.

d. Accused not attached to or embarked in a vessel; Record may be used in aggravation in event of later court-martial. Appendix A-1-d is an Accused's Notification of Rights, which is for use if it is intended to utilize the

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record of captain's mast/office hours in aggravation in the event of a later court-martial conviction on other charges; see R.C.M. 1001, MCM, and section 0141.

(1) Appendix A-1-d provides for obtaining advice of rights from a lawyer prior to the accused deciding whether to accept or refuse captain's mast/office hours. Such a lawyer may be a military lawyer or a civilian lawyer, obtained by the accused at his own expense. A military lawyer who provides such advice should be "independent." It is considered that a military lawyer who, in the course of his regular duties, acts as the principal legal advisor to the officer, who would hold the captain's mast/office hours, is not "independent."

(2) If the accused does not wish to obtain this advice of rights from a lawyer, the accused should so indicate in the appropriate space and complete the remainder of the form. If the accused states that he desires to obtain advice of rights from a lawyer before deciding whether to accept or reject captain's mast/office hours, Appendix A-1-d shall so indicate, but the remainder of the form shall not be completed until the accused has been given a reasonable opportunity to obtain this advice of rights. Such advice to an accused from a military lawyer should be limited to an explanation of the legal ramifications involved in the right to refuse captain's mast/office hours. These legal ramifications are limited to areas such as: the accused's substantive and procedural rights at a court-martial as opposed to captain's mast/office hours; the respective punishment limitations; and the potential uses of courts-martial convictions and captain's mast/office hours records at any subsequent trial by court-martial. Providing these technical explanations regarding basic principles of military law do not, per se, establish an attorney-client relationship, nor do they constitute an assignment of such a military lawyer as the individual's defense counsel or personal representative for purposes of nonjudicial punishment. Military lawyers making such explanations should guard against the establishment of an attorney-client relationship unless detailed by proper authority to serve as defense counsel or personal representative of the accused.

(3) Telephone communication between an accused facing captain's mast/office hours and a military or civilian lawyer is sufficient to satisfy this advice requirement. Appendix A-1-d may be utilized.

(4) In the event that the accused, through no fault of the accused's own, does not receive the requisite advice of rights, and does not waive the right thereto, Appendix A-1-c may be utilized in lieu of Appendix A-1-d.

e. Service record entries

(1) In the event punishment is imposed at captain's mast/office hours, and Appendix A-1-d is utilized, or the accused is represented by a lawyer at the hearing, appropriate service-record entries should be made and signed by appropriate personnel, on page 13 (Navy) or page 12 (Marine Corps), or in such other manner as service directives may require. As an example, if the accused executed Appendix A-1-d, the service record entry should state, after appropriate verification, the following:

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(Grade and name of accused) signed JAGMAN Appendix A-1-d, prior to (his)(her) (captain's mast)(office hours) which was held on (date of captain's mast/office hours).

The accused [talked to a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours)] [elected to give up (his)(her) right to talk with a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours)]. The accused was advised that acceptance of nonjudicial punishment does not preclude further administrative action against (him)(her). This may include being processed for an administrative discharge that could result in an other than honorable discharge. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of (captain's mast) (office hours).

(2) If the accused is represented by a military or civilian lawyer as a personal representative at captain's mast/office hours, the following example of a service-record entry may be made, after appropriate verification:

(Grade and name of accused) received punishment at (captain's mast) (office hours) on (date). The accused was represented by a lawyer.

0110 PROCEDURES FOR IMPOSITION OF NONJUDICIAL PUNISHMENT

a. Captain's mast/office hours guide. Appendix A-1-e is a guide for a personal hearing at captain's mast or office hours.

b. Standard of proof. Captain's mast/office hours that results in nonjudicial punishment is not a criminal trial; it is a disciplinary proceeding. Its purpose is to determine whether an offense was committed by the member and, if appropriate, to provide punishment therefore. Such punishment is designed for minor misconduct in a nonjudicial forum, without the permanent stigma of a record of "Federal conviction." As such, the standard of proof by which facts must be established at mast or office hours is a "preponderance of the evidence," rather than "beyond a reasonable doubt," as it is at courts-martial.

c. Observers at captain's mast/office hours. The presence of representative members of the command as observers during personal hearings under paragraph 4 of Part V, MCM, and Article 15, UCMJ, is authorized and encouraged as a method of dispelling erroneous perceptions which may exist concerning the integrity and fairness of the imposition of nonjudicial punishment. Nothing in these requirements precludes the alleged offender from requesting to confer privately with the officer conducting the hearing to relate matters that, in the opinion of the alleged offender, are of a personal nature.

d. Alternatives to personal appearance. Ordinarily, before nonjudicial punishment may be imposed, the service member shall be entitled to appear personally before the authority imposing nonjudicial punishment. However, when personal appearance is prevented by the unavailability of the nonjudicial punishment authority, or by extraordinary circumstances, the nonjudicial

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punishment proceedings may be conducted telephonically, via video teleconference, or other similar remote means which provide for two-way voice communication. These alternatives are in addition to those already provided for in paragraph 4(c) of Part V, MCM. The service member shall be notified in writing prior to the imposition of nonjudicial punishment of the circumstances warranting an alternative to personal appearance.

e. Nonjudicial punishment based on report of a fact-finding body. If nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or other fact-finding body, a preliminary examination shall be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If the individual does not exercise his right to demand trial by court-martial, or if he does not have that right, the individual may submit, in writing, any matter in defense, extenuation, or mitigation to the officer considering imposing the nonjudicial punishment. If the individual concerned was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, such punishment may be imposed without further proceedings. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the procedure prescribed in paragraph 4 of Part V, MCM, must be conducted. In the alternative, the record of the fact-finding body may be returned for additional proceedings during which the individual concerned shall be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

f. Advice after imposition of nonjudicial punishment. The officer who imposes punishment under Article 15, UCMJ, shall again ensure that the offender is fully informed of his right to appeal. Appendix A-1-f is an Accused's Acknowledgment of Appeal Rights that should be signed and witnessed if punishment is imposed.

0111 LIMITATIONS ON AND NATURE OF PUNISHMENTS

a. Restriction imposed upon officers and warrant officers. Restriction, with or without suspension from duty, imposed upon commissioned and warrant officers under paragraph 5b(1)(A) of Part V, MCM, may not exceed 15 consecutive days when imposed by a CO below the grade of major or lieutenant commander.

b. Correctional custody. This punishment shall not be imposed on persons in paygrade E-4 and above unless unsuspended reduction below paygrade E-4 is imposed. See SECNAVINST 1640.9 (series) for instructions concerning the administration of correctional custody.

c. Confinement on bread and water or diminished rations. This punishment shall only be imposed on persons who are, (1) attached to or embarked in a vessel per section 0108c, and (2) in paygrade E-3 or below. This punishment is authorized when the punishment also includes an unsuspended reduction to paygrade E-3 or below.

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d. Extra duties. Subject to the limitations set forth in paragraph 5c(6) of Part V, MCM, this punishment shall be considered satisfied when the enlisted person shall have performed extra duties during available time in addition to performing his military duties. Normally the immediate CO of the accused will designate the amount and character of the extra duties to be performed. The daily performance of the extra duties, before or after routine duties are completed, constitutes the punishment whether the particular daily assignment requires 1, 2, or more hours, but normally extra duties should not extend to more than 2 hours per day. Except in cases of members of the Naval or Marine Corps Reserve performing inactive training or annual training for a period of less than 7 days, extra duty shall not be performed on Sunday, although Sunday counts in the computation of the period for which such punishment is imposed. Guard duty shall not be assigned as punishment.

e. Reduction in grade. Under no circumstances may the punishment of reduction in grade be imposed except to the next inferior paygrade. Navy personnel in the paygrade of E-7 or above and Marine Corps personnel in the paygrade of E-6 or above may not be reduced in paygrade. A CO or OIC serving in the grade of W-1 through CWO-5 may not reduce enlisted personnel under any circumstances.

f. Arrest in quarters. An officer or warrant officer undergoing this punishment shall not be permitted to perform duties involving the exercise of authority over any person who is otherwise subordinate to him.

0112 LIMITATIONS ON NONJUDICIAL PUNISHMENTS TO BE IMPOSED ON RESERVE COMPONENT PERSONNEL NOT ON ACTIVE DUTY

a. Punishment involving restraint on liberty

(1) If imposed on Reserve component personnel on inactive duty training, restriction shall not extend beyond the normal inactive duty training period but may be carried over to subsequent periods of inactive duty training or active duty. A Reserve component member on inactive duty may not be ordered to active duty for the sole purpose of serving such punishment, unless the order to active duty received Secretarial approval, see section 0123.

(2) If imposed on Reserve component personnel who have been ordered to active duty for disciplinary proceedings, the period of active duty may not be extended for the purpose of serving such punishment, unless the order to active duty received Secretarial approval, see section 0123.

(3) Confinement on bread and water may not be imposed, unless the Reserve component member was ordered to active duty with Secretarial approval, see section 0123.

(4) Correctional custody, extra duties, and arrest in quarters may not be imposed on Reserve component personnel on inactive duty training.

b. Punishment involving forfeiture of pay. Pay subject to forfeiture refers only to basic pay, plus sea or hardship duty pay. If punishment also includes reduction in grade, forfeiture shall be based on the grade to which

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the accused is reduced. For inactive duty training Reserve component personnel ordered to active duty for punishment and released there from prior to collection of all forfeitures, see DOD 7000.14-R, Volume 7A, Chapter 58, section 5806.

0113 EFFECTIVE DATE AND EXECUTION OF NONJUDICIAL PUNISHMENTS

a. Forfeiture of pay and reduction in grade. These punishments, if unsuspended, take effect when imposed at the nonjudicial punishment proceedings. If suspended, and the suspension is later vacated, these punishments take effect for all purposes on the date the suspension is vacated. If, subsequent to the imposition of a punishment of forfeiture of pay and prior to the execution of this punishment, an accused absents himself without authority, such period of absence shall interrupt the service of this punishment and shall be excluded in computing the service of this punishment. If a forfeiture of pay is imposed, however, while a prior punishment of forfeiture of pay is still in effect, the prior punishment will be completed before the latter begins to run. A punishment to reduction in rate may be executed in the accused's absence.

b. Punishments involving restraint and extra duties

(1) Generally. The punishments of arrest in quarters, correctional custody, confinement on bread and water or diminished rations, extra duties, and restriction, if unsuspended, take effect when imposed and are executed when served. See paragraph 7 of Part V, MCM, if an appeal is filed.

(2) Interruption by absence or later punishment. If subsequent to the imposition and prior to the execution of these punishments an accused absents himself without authority, the period of absence shall interrupt the service of the unexecuted portion of these punishments. The execution of any previously imposed nonjudicial punishment involving restraint will normally be interrupted by a subsequent nonjudicial punishment involving restraint. Upon execution of the later-imposed nonjudicial punishment involving restraint, the unexecuted portion of the earlier punishment will be executed. The officer imposing the later punishment may, however, order that the earlier punishment be completed prior to execution of the later punishment. A sentence imposed by a court-martial will also interrupt the service of any nonjudicial punishment involving restraint. When the judicially imposed punishment has been served, any unexecuted nonjudicial punishment will be completed.

(3) Deferment of execution. COs and OICs may, when adequate facilities are not available or when the exigencies of the service require, defer execution of correctional custody or confinement on bread and water or diminished rations, for a reasonable period of time, not to exceed 15 days, after imposition. Also, COs and OICs may, if the accused is found to be medically unfit for the service of the punishments of correctional custody or confinement on bread and water or diminished rations, defer, for a period not to exceed 15 days, the execution of the punishment until the accused is determined to be medically fit to serve the punishment. If at the end of the deferment period the accused remains medically unfit to serve the punishment of correctional custody or confinement on bread and water or diminished rations, the CO or OIC who imposed the punishment may mitigate the punishment

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to one no more severe than the original punishment announced.

c. Punitive letters. These punishments take effect when imposed. A punitive letter is imposed when announced to the offender. The imposition of a punitive letter may not be suspended.

0114 PUNITIVE CENSURE

a. General. "Censure" is a statement of adverse opinion or criticism of an individual's conduct or performance of duty expressed by a superior in the member's chain-of-command. Censure may be punitive or nonpunitive. See section 0105 regarding nonpunitive censure.

b. Secretarial letter of censure. The Secretary of the Navy may administratively censure members in writing without reference to Article 15, UCMJ. The member to whom a Secretarial letter of censure is addressed has no right of appeal. Unless otherwise directed, a copy of the letter will be filed in the official record of the person censured. If a copy of the letter is filed in the official record of the member, the individual may submit a rebuttal. Any such reply shall be temperate in language and confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Replies shall not contain countercharges. The issuance of a Secretarial letter of censure and the underlying facts may be mentioned in a fitness report and used to support a detachment for cause proceeding, relief of command, negative endorsement, or any other administrative action on the part of the service concerned.

c. Punitive censure. A punitive letter is issued as nonjudicial punishment or as the result of a sentence by court-martial, see section 0152. When imposed upon officers, punitive censure must be in writing. When imposed upon enlisted personnel as nonjudicial punishment, punitive censure may be either written or oral. Unless withdrawn or set aside by higher authority upon appeal, punitive letters become part of the official service record of the member to whom they are addressed. The issuance of a punitive letter and the facts of the underlying offenses may be mentioned in the member's fitness report or enlisted evaluation and used to support a detachment for cause proceeding, relief of command, or any other administrative action on the part of the service concerned. Procedures for issuance of punitive letters and procedures of appeal rights in connection with imposition as nonjudicial punishment are discussed below in subsections f and g.

d. Other censures. No other punitive censure is authorized.

e. Internal departmental responsibility. Correspondence, records, and files in the DON that relate to punitive censure and Secretarial letters of censure are personnel matters under the primary cognizance of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

f. Punitive censure procedures

(1) Issuing authority. When an officer has committed an offense that warrants a punitive letter, the immediate CO subject to paragraphs 3 and 4 of Part V, MCM, may issue the letter or refer the matter through the chain-of-

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command, normally to the superior GCMCA over the prospective addressee. The degree of severity and effect of a punitive letter increases with the grade of the officer who issues the letter.

(2) Hearing requirement. Subject to the provisions of Article 15(a), UCMJ, paragraph 3 of Part V, MCM, and section 0108 regarding demand for trial, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry for acts or omissions for which the individual was accorded the rights of a party or on the basis of captain's mast/office hours prescribed in paragraph 4 of Part V, MCM. When a hearing at captain's mast/office hours is conducted, the officer conducting the hearing shall prepare a report thereof. The report shall include a summary of the testimony of witnesses, statements, and affidavits submitted to the officer holding the hearing, and a description of items of information in the nature of physical or documentary evidence considered at the hearing.

(3) Content of letter

(a) General. A punitive letter issued pursuant to Article 15, UCMJ, may be imposed only for acts or omissions constituting minor offenses under the UCMJ, see paragraph 1e of Part V, MCM. The letter must set forth the facts constituting the offense but need not refer to any specific punitive Article of the UCMJ nor satisfy the drafting requirements of court-martial specifications. The letter should contain sufficient specific facts, without reference to other documents, to apprise a reader of all relevant facts and circumstances of the offense. General conclusions, such as "gross negligence," "unofficer-like conduct," or "dereliction of duty," are valueless unless accompanied by specific facts upon which they are based. A sample punitive letter is set forth for guidance in Appendix A-1-g.

(b) References. All punitive letters should refer to all prior proceedings and correspondence upon which they are based, applicable laws and regulations, including the MCM, and this section. Particular reference should be made to the hearing afforded the offender. Where applicable, the letter shall include a statement that the recipient was advised of the right to demand trial by court-martial in lieu of nonjudicial punishment and that such trial was not demanded. See Article 15(a), UCMJ.

(c) Classification. Specific details requiring security classification should be omitted from punitive letters. A letter issued as nonjudicial punishment shall be designated "For Official Use Only" unless it contains classified matter. See SECNAVINST 5510.36 (series) for marking instructions.

(d) Notification of right to appeal and right to submit statement. Punitive letters, except letters issued in execution of a court-martial sentence as described in section 0152 and Secretarial letters of censure, shall contain the following:

> You may appeal this action to the next superior authority, the _____ via [insert the official designation of the CO issuing the letter or, if the officer is the immediate CO of the offender, the official designations of the immediate CO of the offender and the officer

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issuing the letter] under the provisions of Article 15(e) of the Uniform Code of Military Justice, paragraph 7 of Part V, Manual for Courts-Martial, and section 0114 of the Manual of the Judge Advocate General.

If you do not desire to appeal this action, you are directed to so inform the issuing authority in writing within 5 days after the receipt of this letter.

If you do desire to appeal this action, you are advised that an appeal must be made within a reasonable time and that, in the absence of unusual circumstances, an appeal made more than 5 days after the receipt of this letter may be considered as not having been made within a reasonable time. If, in your opinion, unusual circumstances make it impracticable or extremely difficult for you to prepare and submit your appeal within the 5 days, you shall immediately advise the officer issuing this letter of such circumstances and request an appropriate extension of time to submit your appeal. Failure to receive a reply to such request will not, however, constitute a grant of such extension of time to submit your appeal.

In all communications concerning an appeal of this action, you are directed to state the date of your receipt of this letter.

Unless withdrawn or set aside by higher authority, a copy of this letter will be placed in your official record at [Bureau of Naval Personnel] [Headquarters, U.S. Marine Corps]. You may forward within 15 days after receipt of final denial of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, a statement concerning this letter for inclusion in your record. If you do not desire to submit a statement, you shall so state in writing within 5 days. You are advised that any statement submitted must be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement may not contain countercharges. Your reporting senior may note this letter in your next [fitness report] [performance evaluation] submitted after this letter becomes final, either by decision of higher authority upon appeal or by your decision not to appeal. (Omit last sentence in cases involving Marine Corps enlisted personnel in paygrades E-4 or below).

g. Appeals. The following rules apply to appeals of punitive letters, in addition to those rules contained in paragraph 7 of Part V, MCM, and sections 0116 and 0117:

(1) A copy of the report of captain's mast/office hours shall be provided to the individual upon request except where the interests of national security may be adversely affected. A copy shall be made available to the individual for use in preparation of a defense or appeal. See section 0116 for similar rules concerning a copy of the record of an investigation or court of inquiry.

(2) In forwarding an appeal from a punitive letter, see section 0116, the officer who issued the letter shall attach to the appeal a copy of the punitive letter and the record of investigation or court of inquiry or report of hearing on which the letter is based. The appeal shall be forwarded via the chain-of-command to the superior authority to whom the appeal is made.

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The superior authority to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if such action is deemed necessary in the interests of justice.

(3) Appeals from a punitive letter imposed as nonjudicial punishment shall be forwarded as specified in section 0117.

(4) The standard of review for a punitive letter of censure will be that the language in the letter is "accurate and relevant to the offenses committed and the punishment imposed." The contents of the appeal must be couched in terms that are temperate and factual.

(5) Upon determination of the appeal, the superior authority acting on the appeal shall advise the appellant of the action taken via the immediate CO, with copies of the action to officers in the chain-of-command through whom the appeal was forwarded. The superior authority shall also return all papers to the commander who issued the letter.

h. Forwarding letter. Upon denial of any appeal taken, the lapse of a reasonable time after issuance, see section 0116, or upon receipt of the addressee's statement that an appeal is not desired, a copy of the punitive letter and other documents required by the Chief of Naval Personnel or the Commandant of the Marine Corps, together with the addressee's statement, a written declaration that he does not desire to make a statement, or a written declaration that a reasonable time after issuance as elapsed shall be forwarded to Chief of Naval Personnel (PERS-82 for officers and PERS-83 for enlisted) or the Commandant of the Marine Corps (Code JAM for officers and Code MMRB-20 for enlisted), as appropriate. If the punitive letter is not sustained on appeal, a copy of the letter shall not be filed in the official record of the member concerned. The command issuing a punitive letter has the responsibility of assembling and forwarding at one time all the foregoing documents and of providing a copy of the forwarding letter for each via addressee.

i. Removal and set aside. Material properly placed in an officer's or enlisted member's official record may not normally be removed or destroyed.

(1) If a factual error or other reasons indicate that a punitive letter issued under Article 15, UCMJ, and filed in the addressee's official record, results in a clear injustice, the officer referred to in paragraph 6 of Part V, MCM, and section 0118, may set aside or remove or direct the set aside or removal of the punitive letter. Removal or set aside occurs by issuing a second letter to the officer or enlisted member concerned announcing the cancellation of the punitive letter and setting forth in detail the reason for cancellation.

(2) If a punitive letter is removed or set aside by a superior authority before a copy of the original of such letter is forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, the punitive letter will not be forwarded and copies of the punitive letter will be removed from all files relating to the member and destroyed.

(3) If the removal or set aside occurs after a copy of the punitive letter has been forwarded, a copy of the letter of cancellation shall be

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forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, as well as to any other addressees to whom copies of the punitive letter were forwarded. Upon receipt of the copy of the letter of removal or set aside, addressees will ensure that copies of the punitive letter shall not be filed in or, if already filed, shall be removed from, the member's official record and destroyed. The order or letter of removal or set aside or a copy thereof shall not be filed in the member's official records.

(4) If a punitive letter is filed inadvertently or by mistake of fact, such document may be removed only by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. In other cases, only the Secretary of the Navy acting through the Board for Correction of Naval Records may order removal of punitive letters and other documents in official records.

j. Public reprimands. Omission of the word "private" preceding "admonition or reprimand" in Article 15, UCMJ, does not constitute authority to COs to issue "public reprimands." COs shall not issue public reprimands.

0115 ANNOUNCEMENT OF DISPOSITION OF NONJUDICIAL PUNISHMENT

a. Publication. Publication of nonjudicial punishment results is rooted in the reasonable belief that it serves to deter other members of the organization from committing similar offenses and that it has salutary effects upon the morale of the organization. Accordingly, COs may, if the interests of rehabilitation of the offender, good order and discipline, high morale, and perceptions of fairness so warrant, establish a policy whereby the disposition of nonjudicial punishment cases are announced. See section 0509. Announcement may be, for example, by any or all of the methods below.

b. Plan of the Day publication. The name, rate, offense(s), and disposition of the offender may be published in the plan of the day within 1 month of the imposition of nonjudicial punishment or, if the punishment is appealed, within 1 month of the date the appeal is denied, provided that the plan of the day is disseminated to military personnel only. If the plan of the day is disseminated to other than military personnel, nonjudicial punishment results may be published without the name of the accused.

c. Bulletin boards. The name, rate, offense(s), and disposition of the individual case may be posted within 1 month of the imposition of nonjudicial punishment or, if the punishment is appealed, within 1 month of the date the appeal is denied, on command bulletin boards for military personnel only. If command bulletin boards are accessible to other than military personnel, nonjudicial punishment results may be published without the name of the accused.

d. Daily formation or morning quarters. The name, rate, offense(s), and disposition of nonjudicial punishment cases may be announced at daily formations or morning quarters within 1 month of the imposition of nonjudicial punishment or, if the punishment is appealed, within 1 month of the date the appeal is denied.

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0116 COMMAND ACTION ON NONJUDICIAL PUNISHMENT APPEALS

a. Time limit

(1) In accordance with paragraph 7d of Part V, MCM, an appeal of nonjudicial punishment shall be submitted within 5 working days, excluding weekends and holidays, of the imposition of nonjudicial punishment, or the right to appeal shall be waived in the absence of good cause shown. In computing this appeal period, allowance shall be made for the time required to transmit communications pertaining to the imposition of nonjudicial punishment and the appeal therefrom through the mails. The appeal period commences to run from the date of the imposition of the punishment, even though all or any part of the punishment imposed is suspended. When a punitive letter is imposed, an appeal of nonjudicial punishment shall be submitted within 5 working days after the accused receives the letter.

(2) If it appears that good cause may exist which would make it impracticable or extremely difficult for the accused to prepare and submit the appeal within the 5-day period, the accused should immediately advise the officer who imposed the punishment why good cause exists and request an appropriate extension of time within which to submit the appeal. Upon receipt of such a request, the officer who imposed the nonjudicial punishment shall determine whether good cause was shown and shall advise the offender that an extension of time is or is not granted. Absent such a request for extension, the officer acting on the appeal shall determine whether good cause was shown in an appeal submitted more than 5 days after the imposition of the nonjudicial punishment.

b. Procedures

(1) When the officer who imposed the punishment is not the accused's immediate CO, the latter may forward the appeal directly to the officer who imposed the punishment for forwarding under section 0117. Similarly, the action of the superior authority on appeal may be forwarded by the officer who imposed the punishment directly to the offender's CO for delivery. Copies of the correspondence should be provided for intermediate authorities in the chain-of-command.

(2) In any case where nonjudicial punishment is imposed on the basis of information contained in the record of a court of inquiry or fact-finding body, a copy of the record, including the findings, opinions, and recommendations, together with copies of endorsements thereon, shall, except where the interests of national security may be adversely affected, be made available to the accused for examination in connection with the preparation of an appeal. In case of doubt, the matter shall be referred to the Office of the Judge Advocate General (OJAG) (Code 17) for advice.

c. Contents of forwarding endorsement. The contents of the forwarding endorsement of the officer who imposed the punishment should normally include:

(1) Comment on any assertions of fact contained in the letter of appeal that the officer who imposed the punishment considers to be inaccurate or erroneous.

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(2) Recitation of any facts concerning the offenses that are not otherwise included in the appeal papers. If such factual information was brought out at the captain's mast/office hours hearing of the case, the endorsement should so state and include any comment in regard thereto made by the appellant at the captain's mast/office hours. Any other adverse factual information set forth in the endorsement, unless it recites matters already set forth in official service record entries, shall be referred to the appellant for comment, and he shall be given an opportunity to submit a statement in regard thereto or state that he does not wish to make any statement.

(3) As an enclosure, a copy of the completed mast report form (NAVPERS 1626/7 (Rev. 8-81)) or Unit Punishment Book (NAVMC 10132 (Rev. 10-81 or NAVMC 10132 Rev. 8-75)).

(4) As enclosures, copies of all documents and signed statements that were considered as evidence at the captain's mast/office hours hearing or, if the nonjudicial punishment was imposed on the basis of the record of a court of inquiry or other fact-finding body, a copy of that record, including the findings of fact, opinions and recommendations, together with copies of any endorsements thereon.

(5) As an enclosure, a copy of the appellant's record of performance as set forth on service record page 9 (Navy) or Record of Service and NAVMC 118(3) (Marine).

0117 AUTHORITY TO ACT ON NONJUDICIAL PUNISHMENT APPEALS

a. When the officer who imposed punishment is in a Navy chain-of-command. Any appeal from nonjudicial punishment in accordance with paragraph 7 of Part V, MCM shall, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain-of-command to the officer who imposed the punishment, be forwarded to the Region Commander or to a subordinate commander authorized to convene general courts-martial and designated by the Region Commander for this purpose. When the cognizant Region Commander or a designated subordinate commander is not superior in rank or command to the officer who imposed the punishment or when the punishment is imposed by a CO who is an Region Commander or a designated subordinate commander, the appeal shall be forwarded to the officer authorized to convene general courts-martial and next superior in the chain-of-command to the officer who imposed the punishment. For mobile units, the Region Commander or designated subordinate commander for the above purpose is the Region Commander or designated subordinate commander most accessible to the unit at the time of the forwarding of the appeal.

b. When the officer who imposed punishment is in the chain-of-command of the Commandant of the Marine Corps. Any appeal from nonjudicial punishment in accordance with paragraph 7 of Part V, MCM shall, in the absence of specific direction to the contrary by a general court martial convening authority (GCMCA) and superior in the chain-of-command to the officer who imposed the punishment, be made to the officer who is next superior in the operational chain-of-command to the officer who imposed the punishment. When such review is impracticable due to operational commitments, as determined by the officer

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who imposed punishment, appeal from nonjudicial punishment shall be made to the Marine GCMCA geographically nearest and senior to the officer who imposed the punishment. That officer may delegate appellate authority to any CO in his organization who is senior in grade and in level of command to the officer who imposed punishment. In no case, however, shall an officer not authorized to convene general courts-martial act on an appeal which, absent the impracticable circumstances, would have been acted on by an officer authorized to convene general courts-martial. The appellant need not be, at the time of his appeal, a member of an organization within the chain-of-command of the officer acting on the appeal. In those cases in which the Commandant of the Marine Corps is the next superior in the chain-of-command and in which the officer who imposed punishment is not a general officer in command, the appeal shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest the officer who imposed the punishment.

c. When punishment is imposed within a multiservice command or unit

(1) An appeal from nonjudicial punishment imposed by a multiservice commander or OIC shall, in the case of Navy personnel, be made to the nearest Navy Region Commander or to a subordinate GCMCA designated by the Region Commander for this purpose. However, when such Region Commander or designated subordinate commander is not superior in rank to the officer who imposed the punishment, the appeal shall, in the absence of specific direction to the contrary by the Chief of Naval Operations, be made to the Naval officer exercising GCMCA geographically nearest and superior in rank to the officer who imposed the punishment. If directed, or in the event that an officer cannot be found who is superior in rank to the officer who imposed the punishment, the appeal shall be made to the Chief of Naval Operations.

(2) In the case of Marine Corps personnel, an appeal from nonjudicial punishment shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest and superior in rank to the officer who imposed the punishment. If directed, or in the event that an officer cannot be found who is superior in rank to the officer who imposed the punishment, the appeal shall be made to the Commandant.

(3) In those cases in which both the officer who imposed the nonjudicial punishment and that officer's immediate superior in command (ISIC) are from the Naval service, and that immediate superior commander has GCMCA, the appeal authority shall be that ISIC.

(4) An appeal from nonjudicial punishment imposed by an officer of the Marine Corps or Navy designated as a CO pursuant to section 0106 shall be made to the commander of the multiservice command who made the designation if such commander specifically so directs. In the absence of such direction, an appeal from nonjudicial punishment imposed by an officer of the Marine Corps shall be made to the Marine Corps general officer in command geographically nearest and superior in rank to the officer who imposed the punishment unless otherwise directed by the Commandant of the Marine Corps. Absent direction to the contrary from the multiservice commander, an appeal from nonjudicial punishment imposed by an officer of the Navy shall be made to the nearest Navy Region Commander or to a subordinate GCMCA designated by the Region Commander

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for this purpose. However, when such Region Commander or designated subordinate commander is not superior in rank to the officer who imposed the punishment, the appeal shall be to the Naval GCMCA geographically nearest and superior in rank to the officer who imposed the punishment.

d. Delegation of authority to act on appeals. Such authority may be delegated in accordance with the provisions of section 0106. An officer who has delegated his nonjudicial punishment powers to a principal assistant under section 0106 may not act on an appeal from punishment imposed by such principal assistant. In such cases and in other cases where it may be inappropriate for the officer designated by subsection a or b to act on the appeal, as where an identity of persons or staff may exist with the command which imposed the punishment, such fact should be noted in forwarding the appeal to the appropriate authority who may act on the appeal.

e. Rehearing after appeal. A superior authority, in acting on an appeal, may set aside a nonjudicial punishment due to procedural error that materially prejudiced a substantial right of the member on whom punishment was imposed, not amounting to a finding of insufficient evidence to impose nonjudicial punishment. In such event, if the superior authority specifically authorizes such in his other action on the appeal, additional proceedings under Article 15, UCMJ, may be conducted by the officer who imposed the original nonjudicial punishment, or his successor in command, with regard to those offenses for which the appellant received nonjudicial punishment in the original proceeding. Any punishment imposed during such additional proceedings may be no more severe than that awarded during the original proceedings, unless other offenses, which occurred subsequent to the date of the nonjudicial punishment set aside, are included in the offenses charged and for which punishment is imposed. An individual, whether or not attached to or embarked in a vessel, has no right to demand trial by court-martial for those offenses for which the rehearing was authorized, unless the appeal was granted on a claim pertaining to the validity of the accused's prior waiver of the right to demand trial by court-martial, but an individual who is not attached to or embarked in a vessel retains the right to demand trial by court-martial for any added offense which occurred subsequent to the date of the nonjudicial punishment which was set aside.

0118 SUSPENSION, MITIGATION, REMISSION, SETTING ASIDE, AND VACATION OF SUSPENSION

a. Definition of "successor in command." For purposes of Article 15, UCMJ, and this Chapter, the term "successor in command" refers to an officer succeeding to the command by being detailed or succeeding thereto as described in U.S. Navy Regulations (1990). The term is not limited to the officer next succeeding.

b. Authority to suspend, mitigate, remit, set aside: new commander. When a person upon whom nonjudicial punishment has been imposed is thereafter, by competent transfer orders, including temporary additional duty orders, assigned to another command, unit, or activity, or returns to the parent activity after temporary additional duty elsewhere, the receiving CO or OIC, and his successor in command may, under Article 15(d), UCMJ, and the conditions set forth in paragraph 6 of Part V, MCM, exercise the same powers

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with respect to the punishment imposed as may be exercised by the officer who imposed the punishment, provided that the punishment so affected and, in the case of mitigation, the punishment to which such punishment is mitigated, is one within the authority of such new commander to impose.

c. Interruption of probationary period. The running of the period of suspension of the punishment is interrupted by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the punishment.

d. Vacation of suspension. A commander or OIC may only vacate a suspension of punishment if a violation of the conditions of suspension occurs within the period of suspension. Before vacating a suspension, a commander or OIC ordinarily shall notify the service member and give that member the opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment is of the kind set forth in Article 15(e)(1)-(7), MCM, the service member should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate suspension of the punishment to present any matters in defense, extenuation, or mitigation of the violations on which the vacation action is to be based. The order vacating a suspension must be issued within 10 working days of the commencement of the vacation proceedings. The decision to vacate suspension of nonjudicial punishment is not appealable under paragraph 7 of Part V, MCM, but is a proper subject of an Article 138, UCMJ, complaint, see Chapter III of this Manual.

0119 RECORDS OF NONJUDICIAL PUNISHMENT

a. Records. The records of nonjudicial punishment shall be maintained and disposed of in accordance with paragraph 8 of Part V, MCM, and implementing regulations issued by the Chief of Naval Personnel and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 1626/7 (Rev. 12-80), S/N 0106-LF-016-2636 and NAVMC 10132 (Rev. 4-02), S/N 0000-00-002-1305. See section 0148 for procurement information of these forms.

b. Report of officer nonjudicial punishment

(1) Report of misconduct. All Navy officer misconduct must be reported to Navy Personnel Command (PERS-4834). Marine officer misconduct must be reported to the Commandant of the Marine Corps (JAM), per MCO 5800.16 (LEGADMINMAN). Navy officer misconduct shall be reported if:

(a) the suspect is in the grade of captain or above;

(b) the suspect is a commander with special court-martial convening authority; or

(c) in the judgment of the superior commander:

1. the incident in question may generate significant adverse publicity;

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2. formal disciplinary action or a recommendation for administrative separation processing may result; or

3. other special circumstances warrant notification.

(2) After nonjudicial punishment. Once the results of the nonjudicial punishment are final (i.e., the appeal process is completed or waived), a final report will be sent to Navy Personnel Command (PERS-4834) or Commandant of the Marine Corps (JAM) as appropriate. See SECNAVINST 1920.6 (series), the Military Personnel Manual or the Marine LEGADMINMAN. If the officer imposing the nonjudicial punishment is not a flag officer, the letter report will be submitted via the first flag officer in the administrative chain-of-command. Fleet or Type commanders may require the letter report be forwarded through command channels. These required reports are separate and distinct from any reported nonjudicial punishment that may be contained in investigations or other correspondence. See Appendix A-1-q for a sample letter with endorsement for Marine Corps cases; for Navy cases see the Military Personnel Manual section 1611-010 for the letter report requirements.

PART C -- COURTS-MARTIAL

SUBPART C1 - PRETRIAL MATTERS

0120 DESIGNATION OF ADDITIONAL CONVENING AUTHORITIES

a. General courts-martial. The Secretary of the Navy, acting under Article 22(a)(8), UCMJ, has authorized the following officers, when in an active duty or inactive duty training status, to convene general courts-martial. This list is in addition to those officers authorized to convene general courts-martial by Articles 22(a)(5) through (7) and 22(a)(9), UCMJ:

(1) All flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy or Marine Corps.

(2) The following officers or their successors in command:

(a) Chief of Naval Operations

(b) Commandant of the Marine Corps

(c) Vice Chief of Naval Operations

(d) Deputy Commander, U.S. Naval Forces, Europe

(e) Deputy Chief of Naval Personnel

(f) Commanders, Fleet Air Commands

(g) Commander, Naval Reserve Force

(h) Commander, Naval Reserve Forces Command

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(i) Commander, Naval Air Force Reserve

(j) Commanders, Naval Regions

(k) Commander, U.S. Naval Activities, Spain

(l) Commander, U.S. Naval Activities, United Kingdom

(m) CO, U.S. Naval Support Activity, Naples

(n) Commander, Naval Air Warfare Center Weapons Division, China Lake

(o) Commander, Naval Training Center, Great Lakes

(p) CO, Naval Air Station, Key West

(q) Commander, U.S. Naval Forces, Marianas

(r) CO, Marine Corps Logistics Base, Barstow

(s) CO, Naval Air Station, Sigonella

(t) CO, Naval Air Station, Whidbey Island

(u) CO, Naval Air Station, Lemoore

(v) Commandant, Naval District Washington

(w) Commander, Combat Logistics Squadron TWO

(x) Commander, Strategic Communications Wing ONE

(y) Commander, Marine Corps Base, Quantico

(z) Commander, Naval Installations Command

(aa) Deputy Commander, U.S. Marine Corps Forces Central Command

(bb) Commanders, Marine Corps Air Stations, Miramar, Yuma, Cherry Point, New River, and Beaufort

(cc) Commander, Marine Corps Base, Camp Pendleton

(dd) Commander, Marine Corps Base, Camp Lejeune

(ee) Commander, Marine Corps Logistics Base, Albany

(ff) Commander, Marine Corps Air Ground Combat Command, Twentynine Palms

(3) The Secretary of the Navy has designated and empowered the CO, Navy-Marine Corps Appellate Leave Activity and the CO, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS, to exercise limited general

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court-martial jurisdiction necessary to order execution of a sentence to a punitive discharge, take action on the findings or sentence in accordance with the instructions transmitted by the JAG, and effect clemency action decided by the Naval Clemency and Parole Board. See section 0159 concerning the clemency powers of the CO, Navy-Marine Corps Appellate Leave Activity, and the CO, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS.

(4) Any officer whose nomination for promotion to flag or general officer rank has been confirmed by the Senate and who is serving in a flag or general officer billet and in command of a Naval service unit or activity, or is the immediate temporary successor in command of such an officer.

b. Special courts-martial. The Secretary of the Navy, acting under Article 23(a)(7), UCMJ, has authorized the following officers, when in an active duty or inactive duty training status, to convene special courts-martial. This list is in addition to those officers authorized to convene special courts-martial by Article 23(a)(5) and (6), UCMJ:

(1) COs of all battalions and squadrons, including both Regular and Reserve Marine Corps commands.

(2) Any commander whose subordinates in the operational or administrative chain-of-command have authority to convene special courts-martial.

(3) All commanders and COs of units and activities of the Navy, including precommissioning units commanded by lieutenant commanders (0-4) or above, but not including inactive duty training Naval Reserve units.

(4) All directors, Marine Corps Districts.

(5) All administrative officers, U.S. Naval Shipyards.

(6) All inspector-instructors and site COs, Marine Corps Reserve organizations.

(7) COs and OICs of organic combat service support organizations providing combat service support to Marine Expeditionary Brigades, Marine Expeditionary Units, or comparable Marine Air-Ground Task Forces.

(8) COs of Marine Expeditionary Units and Marine Expeditionary Unit Service Support Groups.

c. Summary courts-martial. Those officers who are empowered to convene general and special courts-martial may convene summary courts-martial. In addition, the Secretary of the Navy has empowered all commanders, COs, and OICs (if authorized) of inactive duty training Naval and Marine Corps Reserve units and activities of the Navy and Marine Corps, who are in a duty status, to convene summary courts-martial.

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0121 REQUESTS FOR AUTHORITY TO CONVENE COURTS-MARTIAL

a. General courts-martial. If authority to convene general courts-martial is desired for an officer who is not empowered by statute or regulation to convene such courts-martial, a letter shall be forwarded to OJAG (Code 20) or the Commandant of the Marine Corps (JAM), as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 22(a)(8), UCMJ.

b. Special and summary courts-martial. If authority to convene special or summary courts-martial is desired for COs other than those listed in section 0120, and such COs are not empowered by statute or regulation to convene such courts, a letter shall be forwarded to OJAG (Code 20) or the Commandant of the Marine Corps (JAM), as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ, or Article 24(a)(4), UCMJ, as appropriate.

c. Separate and detached units. The officer designating an organization as separate or detached, pursuant to U.S. Navy Regulations (1990), may request that the JAG obtain from the Secretary of the Navy the authority for that organization's CO or OIC to convene special or summary courts-martial. The request shall state that the organization has been designated as separate or detached and shall reference Article 23 (a)(7), UCMJ. No request is required for commands empowered under section 0120.

d. COs of staff enlisted personnel. If authority to convene special or summary courts-martial is desired for an officer designated as the CO of staff enlisted personnel, under the provisions of U.S. Navy Regulations (1990), the designating commander shall request OJAG (Code 20) to obtain authorization from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ.

e. Requests for courts-martial convening authority. Such requests shall contain the following information, if applicable:

(1) The number of cases recommended for the type of court-martial for which the convening authority is being sought.

(2) If reorganization or downgrading of a command billet is the reason for such a request, state that fact and how the change affects the current and prospective convening authority.

(3) State who would handle military justice matters if the requested convening authority is not approved.

(4) The number of commands and tenant commands the prospective convening authority is responsible for, both operationally and administratively.

(5) The number of personnel, officer and enlisted, the prospective convening authority is responsible for, both operationally and administratively.

(6) If applicable, the geographical reasons that necessitate the appointment of such authority.

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(7) Whether the request is for permanent designation as a convening authority or only for a temporary/interim designation based upon a deployment, contingency, or similar rationale.

(8) If the request is for temporary designation as a convening authority, the request shall contain an acknowledgement that the requestor will send written notification to OJAG (Code 20) or to the Commandant of the Marine Corps (JAM), as appropriate, upon the expiration of the designation.

f. Record maintenance. Copies of all Secretarial letters of authorization are maintained in OJAG (Code 20).

0122 GENERAL RESTRICTIONS ON EXERCISE OF COURT-MARTIAL JURISDICTION

a. General, special, and summary courts-martial

(1) The exercise of authority to convene summary, special, and general courts-martial may be restricted by a competent superior commander. A summary court-martial convening authority is authorized to direct a pretrial investigation under Article 32, UCMJ.

(2) A special court-martial convening authority may not refer a capital offense to trial without the prior consent of the officer exercising general court-martial jurisdiction over the command.

b. Units attached to ships. The CO or OIC of a unit attached to a ship of the Navy for duty therein will, while the unit is embarked therein, refrain from exercising any power he might possess to convene and order trial by special or summary court-martial, referring all such matters to the CO of the ship for disposition. The foregoing policy does not apply to Military Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the CO of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the CO of the ship, including disciplinary authority, over all personnel of the Naval service embarked. In the case of units embarked for transportation only, however, the CO of the ship should take disciplinary action under the UCMJ over members of such embarked units only in unusual cases concerning incidents occurring on board the ship.

0123 EXERCISE OF COURT-MARTIAL JURISDICTION OVER RETIRED, RESERVE, FLEET RESERVE, FLEET MARINE CORPS RESERVE, AND DISCHARGED PERSONNEL

a. Policy. In all cases in which jurisdiction is dependent upon the provisions of Article 2(a)(4), (5), or (6) and Article 3(a), (b), or (c), UCMJ, the following policies apply:

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(1) Authority to refer charges against a retired member of the regular component of the Navy or Marine Corps not on active duty but entitled to receive pay, a retired member of the Navy Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty is withheld. No such cases will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense. Members described in this subsection may not be recalled to active duty solely for trial by court-martial. Such members are amenable to court-martial jurisdiction at all times and, if referred to court-martial, are directed to appear.

(2) No case in which jurisdiction is based on Article 3(a), (b), or (c), UCMJ, will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy.

(3) If authorization is withheld under subsections (1) or (2), the JAG, via OJAG (Code 20), shall indicate alternative action or actions, if any, to the convening authority.

b. Request for authorization. Requests for authorization in cases in which jurisdiction is based on Article 3(a), (b), or (c), UCMJ, should contain the following information:

(1) the nature of the offense or offenses charged;

(2) a summary of the evidence in the case;

(3) the facts showing amenability of the accused or suspected person to trial by court-martial;

(4) whether civil jurisdiction exists;

(5) the military status of the accused or suspected person at the present and at the time of the alleged offense; and

(6) the reasons which make trial by court-martial advisable.

Requests shall be addressed to the Secretary of the Navy, via OJAG (Code 20) or the Commandant of the Marine Corps (JAM), as appropriate, and shall be forwarded by the most expeditious means. If considered necessary, authorization may be requested directly by message or telephone.

c. Pretrial apprehension and restraint. Specific authorization of the Secretary of the Navy is required prior to apprehension, arrest, or pretrial confinement of any person who is amenable to trial by court-martial solely by reason of the provisions of Article 2(a)(4), (5), or (6) or Article 3(a), (b), or (c), UCMJ.

d. Jurisdiction over Reserve component personnel under Article 3(d), UCMJ. A member of a Reserve component subject to the UCMJ is not, by virtue of termination of a period of active duty or inactive duty training, relieved

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from amenability to jurisdiction of the UCMJ for an offense against the UCMJ committed during such period of active duty or inactive duty training.

e. Order to active duty in the case of Reserve component personnel not on active duty

(1) When jurisdiction is based upon Article 3(d), UCMJ, members of a Reserve component not on active duty may be ordered to active duty involuntarily only by an officer described in subsection (4) for the purpose of investigation under Article 32, UCMJ, trial by court-martial, or imposition of nonjudicial punishment for offenses committed while subject to the UCMJ without regard to any change between active and Reserve service or within different categories of Reserve service subsequent to commission of the offense.

(2) Requests for an order to active duty under this subsection may be submitted only by officers empowered to convene courts-martial. Funding for these orders should be tasked to the appropriation used on the original set of orders during which the event necessitating recall occurred, ee section 0145. Decisions regarding funding for recall of a service member do not confer any procedural or substantive rights upon the member.

(3) Requests for an order to active duty under this subsection shall:

(a) contain the complete identity of the accused (grade, full name, Social Security number, designator);

(b) include a detailed summary of the contemplated charges and specifications or a copy of the charge sheet, if available; however, care should be exercised to avoid triggering the speedy trial provisions of R.C.M. 707, MCM;

(c) provide a summary of evidence in the case;

(d) state facts showing amenability to trial by court-martial or imposition of nonjudicial punishment;

(e) indicate the military status, unit to which assigned and its location, and home address of the accused at the time of submission and at the time of commission of the alleged offenses; and

(f) indicate where the accused should be ordered to active duty and why the order to active duty is advisable;

(g) indicate the appropriation used on the original set of orders during which the event necessitating recall occurred.

(4) The request should be addressed to a GCMCA in the chain-of-command of the accused at the time of its submission, as designated in section 0120, and who is superior in grade to the submitting officer, or to the Secretary of the Navy, if confinement authority is requested, see sections 0127 and 0134. If necessary, the request to order an accused to active duty under this subsection may be made directly by message or telephone.

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(5) Unless the order to active duty was approved by the Secretary, Under Secretary, or Assistant Secretary of the Navy, the accused may not be sentenced to confinement or be required to serve a punishment of any restraint on liberty during a period other than a period of inactive duty training or active duty.

f. Release from active duty of Reserve component personnel described in subsection e

(1) Reserve component personnel ordered to active duty without Secretarial approval must be released from active duty no later than the close of business one full work day after completion of disciplinary proceedings, i.e., announcement of the sentence by a court-martial or imposition of punishment under Article 15, UCMJ.

(2) Reserve component personnel ordered to active duty with Secretarial approval may be retained on active duty to serve a punishment of confinement or other restraint on liberty, the execution of which is not precluded by the terms of a pretrial agreement. Unless retention on active duty is authorized by other authority, such persons must be released from active duty no later than the close of business one full work day after completion of disciplinary proceedings or service of the sentence to confinement or other restraint on liberty. See R.C.M. 202(c), MCM and section 0134.

g. Tolling statute of limitations. The foregoing rules shall not impede the preferral and processing of sworn charges under Article 30, UCMJ, when such preferral and processing are necessary to prevent barring of trial by the statute of limitations, see Article 43, UCMJ.

0124 EXERCISE OF COURT-MARTIAL JURISDICTION IN CASES TRIED IN DOMESTIC OR FOREIGN CRIMINAL COURTS

a. Policy. When a person in the Naval service has been tried in a state or foreign court, whether convicted or acquitted, or when a member's case has been "diverted" out of the regular criminal process for a probationary period, or has been adjudicated by juvenile court authorities, military charges shall not be referred to a court-martial or be the subject of nonjudicial punishment proceedings for the same act or acts, except in those unusual cases where trial by court-martial or the imposition of nonjudicial punishment is considered essential in the interests of justice, discipline, and proper administration within the Naval service. Such unusual cases shall not be referred to trial by court-martial or be the subject of nonjudicial punishment proceedings without specific permission as provided below. This policy is based on comity between the Federal Government and State/foreign governments and is not intended to confer additional rights upon the accused.

b. Criteria. Referral for trial or the imposition of nonjudicial punishment within the terms of this policy shall be limited to cases that meet one or more of the following criteria:

(1) Cases in which punishment by civil authorities consists solely of probation, and local practice, or the actual terms of probation, do not

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provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(2) Cases in which civilian proceedings concluded without conviction for any reason other than acquittal after trial on the merits.

(3) Other cases in which the interests of justice and discipline are considered to require further action under the UCMJ (e.g., where conduct leading to trial before a State or foreign court has reflected adversely upon the Naval service or when a particular and unique military interest was not or could not be adequately vindicated in the civilian tribunal).

c. Procedure

(1) General, special, summary courts-martial, and nonjudicial punishment proceedings. No case described in subsection b shall be referred for trial by court-martial or be the subject of nonjudicial punishment proceedings without the prior permission of the GCMCA over the command. Grants of such permission shall be reported by the GCMCA concerned by means of a letter addressed to OJAG (Code 20) or for Marine cases, the Commandant of the Marine Corps (JAM), in which he shall describe the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy. Permission of the GCMCA is not required for court-martial proceedings if the civilian adjudication or diversion occurs after the military charges have been referred to a court-martial.

(2) Reporting requirements. The provisions of this section do not affect the reporting requirements or other actions required under other regulations in cases of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

d. Limitations. Personnel who have been tried by courts that derive their authority from the U.S., such as U.S. District Courts, shall not be tried by court-martial or be the subject of nonjudicial punishment for the same act or acts.

0125 EXERCISE OF COURT-MARTIAL JURISDICTION OVER MAJOR FEDERAL OFFENSES

a. Background. The Federal civil authorities have concurrent jurisdiction with military authorities over offenses committed by military personnel that violate both the Federal criminal law and the UCMJ. The Attorney General and the Secretary of Defense have agreed on guidelines for determining which authorities shall have jurisdiction to investigate and prosecute major crimes in particular cases, see Appendix 3, MCM. The administration of this program on behalf of the Naval service has been assigned to the Naval Criminal Investigative Service Command (NCIS). Guidelines are set forth in SECNAVINST 5430.107 (series).

b. Limitation on court-martial jurisdiction. In order to ensure that actions under the UCMJ do not preclude appropriate action by civilian Federal authorities in cases likely to be prosecuted in U.S. District Courts, convening authorities shall ensure that appropriate consultation under the

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Memorandum of Understanding between the Department of Defense (DoD) and the Department of Justice (DOJ) has taken place prior to issuance of a grant of immunity, approval of a pretrial agreement, or trial by court-martial; see Appendix 3, MCM. Accordingly, COs receiving information indicating that Naval personnel have committed a major Federal offense, including any major criminal offense as defined in SECNAVINST 5430.107 (series) committed on a Naval installation, shall refrain from taking action with a view to trial by court-martial, but shall refer the matter to the senior resident agent of the cognizant NCIS office for a determination in accordance with SECNAVINST 5430.107 (series). In the event that the investigation of any such case is referred to a Federal civilian investigative agency, the cognizant U.S. Attorney, subject to the exceptions set forth below, normally will conduct any resulting prosecution.

c. Exceptions

(1) Where it appears that Naval personnel have committed several offenses, including both major Federal offenses and serious but purely military offenses, Naval authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and to retain the accused for prosecution. Any such action shall be reported immediately to OJAG (Code 20) and to the cognizant GCMCA.

(2) When, following referral of a case to a civilian Federal investigative agency for investigation, the cognizant U.S. Attorney declines prosecution, the investigation normally will be resumed by NCIS and the command may then commence court-martial proceedings as soon as the circumstances warrant.

(3) If, while investigation by a Federal civilian investigative agency is pending, existing conditions require immediate prosecution by Naval authorities, the GCMCA will contact the cognizant U.S. Attorney to seek approval for trial by court-martial. If agreement cannot be reached at the local level, the matter shall be referred to OJAG (Code 20) for disposition.

d. Related matters. See Chapter VI concerning the interview of Naval personnel by Federal investigative agencies and the delivery of personnel to Federal authorities. See sections 0126 and 0138 through 0140 regarding grants of immunity in cases involving civilian witnesses or national security.

0126 DETERMINATION OF STATUS OF CASE AS NATIONAL SECURITY CASE, INVESTIGATION OF SUSPECTED NATIONAL SECURITY CASES, AND EXERCISE OF JURISDICTION IN SUCH CASES

a. National security case defined. "National security" is defined at M.R.E. 505(b)(2), MCM, and further defined at R.C.M. 305(h)(2)(B), MCM. A case shall be defined and designated as a national security case if, in the opinion of one of the National Security Case Disposition Authorities (NSCDA) listed in subsection 0126f below, it is a case which, to any serious degree, involves the compromise of a military or defense advantage over any foreign nation or terrorist group; involves an allegation of willful compromise of classified information; affects our military or defense capability to successfully resist hostile or destructive action, overt or covert; or

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involves an act of terrorism. Such cases include an attempt or conspiracy to commit such offenses, as well as conduct aiding and abetting in the commission of such offenses or unlawfully assisting thereafter. Offenses chargeable in national security cases may include, but are not limited to, UCMJ Articles 81, 92 (for violations of SECNAVINST 5510.36 and U.S. Navy Regulations), 104, 106, 106a, 107, 131, and 134; and provisions of the U.S. Code, such as 18 USC 792-93, 798, 1001, 2151-56, 2331-39b, 2381-85, 2388-90; 42 USC 2272-77; and 50 USC 783.

b. Case not designated as a national security case. A case may involve matters and/or materials relating to the security of the U.S., yet need not be designated a national security case if, in the opinion of the cognizant NSCDA, the case does not, to a serious degree, involve compromise of a military or defense advantage over a foreign nation or terrorist group; involve the willful compromise of classified information; substantially affect our military or defense capability to resist hostile or destructive action successfully, covertly or overtly; or constitute an act of terrorism.

c. Referral to the Naval Criminal Investigative Service. Within the DON, NCIS is responsible for the investigation of actual, suspected, or alleged national security incidents including, but not limited to, those offenses enumerated in subsection a above. Commanders and COs shall immediately refer any such incident to NCIS for investigation. SECNAVINST 5430.107 (series) and 5510.36 (series) also pertain. Upon the initiation of any NCIS investigation, NCIS shall notify the appropriate DOJ investigative agency in compliance with DODD 5525.7.

d. Preliminary inquiry. Concurrent with NCIS notification and consistent with the NCIS investigative prerogative, the commander or CO shall initiate a preliminary inquiry in accordance with SECNAVINST 5510.36 (series) and direct the inquiry and required reports be completed within 72 hours. These required 72-hour reports shall not be delayed awaiting a complete assessment of the potential compromise and shall be viewed as a continuing duty to report as details as to possible lost or compromised information is received by the commander or CO. In addition, the commander or CO shall notify CNO (N2) in all cases involving sensitive compartmented information or intelligence information (i.e., intelligence sources or methods, NOFORN material).

e. Notice to the JAG and National Security Case Disposition Authority (NSCDA). If any NCIS investigation or preliminary inquiry described in subsection 0126c or 0126d indicates that the case may meet the criteria of subsection 0126a or that a suspect may have committed any of the offenses enumerated in subsection 0126a, whether or not such violation might also be chargeable under the UCMJ, within the same 72 hours, the commander or CO and NCIS shall notify OJAG (Code 17) or for Marine Corps commands, the Judge Advocate Division (Military Justice). Within the same 72 hours, the CO shall also notify the appropriate NSCDA listed in subsection 0126f. In the event more than one NSCDA may have cognizance, coordinate with the next NSCDA in the administrative chain-of-command.

f. Limitations on convening courts-martial. Commands authorized under R.C.M. 306(a) and 401(a), MCM, to initially dispose of cases involving national security, as defined in subsection 0126a above, are directed to forward such cases to the appropriate NSCDA in the administrative chain-of-

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command listed below for disposition unless directed otherwise by competent authority. This provision is not intended to withdraw or limit the actual jurisdictional authority of commands identified under R.C.M. 306(a) and 401(a), MCM. This provision is promulgated for the exclusive benefit of the Government and does not confer any benefit upon an accused. It shall not be construed to support a jurisdictional challenge to a courts-martial convened by an officer not listed below, or to afford an accused in such courts-martial any other relief. All officers otherwise empowered to dispose of offenses who receive reports or charges of offenses involving national security shall, after taking action prescribed in subsections 0126c-e, forward the completed investigation of such reports or charges for disposition directly and without delay to an appropriate NSCDA listed below. Second echelon commanders who report to the Chief of Naval Operations in the administrative chain-of-command who are not themselves a NSCDA shall forward such reports to Commander, Fleet Forces Command. Those NSCDA listed below may dispose of such reports or charges by any means authorized under R.C.M. 306(c) or 401(c), MCM, to include returning the case for disposition to any convening authority as they may designate. The following officers are designated NSCDAs:

(1) Chief of Naval Operations;

(2) Commandant of the Marine Corps;

(3) Vice Chief of Naval Operations;

(4) Assistant Commandant of the Marine Corps;

(5) Commanders, Fleet Forces Command, U.S. Pacific Fleet, U.S. Naval Forces Europe, U.S. Naval Forces Central Command;

(6) Commander, U.S. Marine Corps Forces Command;

(7) Commander, U.S. Marine Corps Forces, Pacific;

(8) Commanders, Sixth and Seventh Fleets;

(9) Commanding Generals, Marine Expeditionary Forces;

(10) Commanders, Naval Air Force, Submarine, and Surface Forces;

(11) Commander, Naval Education and Training Command;

(12) Commanding General, Marine Corps Combat Development Command, Quantico, VA;

(13) Commanding General, Marine Corps Bases, Japan;

(14) Commanding Generals, Marine Corps Installations East and West;

(15) Commander, U.S. Marine Forces, Reserve; and

(16) Commander, Naval Special Warfare Command.

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See section 0137 regarding pretrial agreements. See section 0159 regarding remission and suspension of sentences in national security cases.

g. Courts-martial involving classified information. See SECNAVINST 5510.36 (series), M.R.E. 505, MCM, and R.C.M. 806, MCM, for procedures relating to trial of cases involving classified information.

h. Reporting requirements by responsible command. Regardless of national security status and in addition to the 72-hour reporting requirement described above or other reporting requirements, in all cases where a possible violation of criminal law involves classified information, whether or not designated a national security case, the responsible command, convening authority, or staff judge advocate shall notify OJAG (Code 17):

(1) when criminal prosecution is contemplated. However, OJAG (Code 17) notification does not take precedence over, or substitute for, NCIS notification required by subsection 0126;

(2) whenever a major development occurs in the case or investigation (e.g., designation as a national security case, apprehension, involvement of other federal agencies); or

(3) at least once every 30 days, whether or not there has been a major development unless the case is being reported by the NSCDA. Include CNO (N2) in the notification for all cases involving sensitive compartmented information or intelligence information (i.e., intelligence sources or methods, NOFORN material).

i. Reporting requirements by NSCDA. Once informed of a potential national security case, the NSCDA shall report to CNO WASHINGTON DC/ N09/DNS/N09N/N09N2/N09D and NAVY JAG WASHINGTON DC/17 on the status of the case every 15 days via SITREP until it is determined that the case is not a national security case or until it is resolved by court conviction, acquittal, or other final disposition. Include CNO(N2) in the report for all cases involving sensitive compartmented information or intelligence information (i.e., intelligence sources or methods, NOFORN material). Each report shall include: the suspect's name and command; date(s) of offense(s) and discovery of the offense(s); date NCIS began investigation; clear description of the nature and sensitivity of the information involved; suspected offense(s); date NSCDA took cognizance; date of preferral and referral of charges, if any; date pretrial confinement or other restraint imposed, if any; a summary of the plan of action and milestones to disposition; NSCDA points of contact; and the official responsible for the next step, as of the time of the report.

0127 PRETRIAL RESTRAINT OF ACCUSED

a. Custody and restraint of accused before or during trial. See R.C.M. 304, 305, and 804(c)(2), MCM.

b. Counsel. Counsel shall be provided, if requested, to an accused in pretrial confinement prior to the initial review of the confinement; however, the accused has no right to an individual military counsel.

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c. Preliminary probable cause review. Within 48 hours of the imposition of pretrial confinement under military control, a neutral and detached official must review the adequacy of the probable cause to believe the confinee has committed an offense and of the necessity for pretrial confinement.

(1) This review does not require a hearing.

(2) This determination need not be in writing; however, it is highly recommended that a written record be maintained.

(3) The reviewing official must be a neutral and detached officer. The official may be the confinee's CO, but this is not required. Additionally, nothing in this section prohibits the commander initially ordering an accused into pretrial confinement from conducting the 48-hour probable cause review.

(4) The requirement for probable cause review is met, and therefore a separate determination of probable cause is not required, in the following circumstances:

(a) the CO, complying with R.C.M. 305(d), personally orders the accused into confinement;

(b) the 72-hour letter report, as required by R.C.M. 305(h)(2), is signed by the CO within 48 hours of the imposition of confinement; or

(c) the 7-day review of pretrial confinement, as required by R.C.M. 305(i) and conducted by a neutral and detached initial reviewing officer, occurs within 48 hours of the imposition of confinement.

d. Initial review officer. All GCMCAs have authority to designate one or more officers of the grade of O-4 or higher to act as the initial review officer for purposes of R.C.M. 305(i)(2). The GCMCA exercising jurisdiction over the confinement facility shall coordinate the assignment of initial review officers to specific cases. The initial review officer shall maintain a copy of the documents considered and memorandum prepared under R.C.M. 305(i)(6) in each case until completion of appellate review and shall forward a copy of the documents considered and the memorandum prepared to the appropriate convening authority of the service member confined. The officers designated as initial review officers should be neutral and detached, be selected for their maturity and experience, and should have command experience if practicable. Nothing in this rule prohibits the use of an initial review officer designated by one GCMCA from reviewing the confinement of a service member of another command or service.

e. Reserve component personnel. Except as provided in section 0134, Reserve component personnel on inactive duty training shall not be placed in pretrial confinement, unless ordered to active duty with the approval of the Secretary, Under Secretary, or Assistant Secretary of the Navy, see section 0123.

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0128 FORWARDING OF CHARGES

a. Forwarding of charges by an officer in a Navy chain-of-command

(1) General court-martial cases. When a CO, in taking action on charges, deems trial by general court-martial to be appropriate, but is not authorized to convene such court or finds the convening of such court impracticable, the charges and necessary allied papers will, in the absence of specific direction to the contrary by a GCMCA superior in the chain-of-command to such CO, be forwarded to the Region Commander or to the subordinate commander authorized to convene general courts-martial and designated by the Region Commander for this purpose. For mobile units, the Region Commander or designated subordinate commander for this purpose is the Region Commander or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the charges. See section 0129 for additional provisions in cases in which the forwarding officer is an accuser.

(2) Special and summary courts-martial cases. When a CO or OIC, in taking action on charges, deems trial by special or summary court-martial to be appropriate, but is not authorized to convene such courts-martial, the charges and necessary allied papers will be forwarded to the superior in the chain-of-command authorized to convene the type of court-martial deemed appropriate. The GCMCA, superior in the chain-of-command to such CO or OIC, may, however, on the basis of a local arrangement with the Region Commander or the designated subordinate commander, direct that such cases be forwarded to the Region Commander or the subordinate commander authorized to convene the type of court-martial deemed appropriate and designated by the Region Commander for this purpose. For mobile units, the Region Commander or designated subordinate commander for this purpose is the Region Commander or designated subordinate commander most accessible to the mobile unit at the time of the forwarding of the charges. See section 0129 for additional provisions in cases in which the forwarding officer is an accuser. Subject to the terms of the local arrangement, forwarding to the Region Commander or designated subordinate commander may also be resorted to even though the immediate or superior CO of the accused is authorized to convene the type of court-martial deemed appropriate but finds such action impracticable.

b. Forwarding of charges by an officer in the chain-of-command of the Commandant of the Marine Corps. When a CO or OIC, in taking action on charges, deems trial by general, special, or summary court-martial to be appropriate, but is not empowered to convene a court as deemed appropriate for the trial of the case, the officer will, in the absence of specific direction to the contrary by a GCMCA, superior in the chain-of-command to such officer, forward the charges and necessary allied papers through the chain-of-command to an officer exercising the kind of court-martial jurisdiction deemed appropriate. See R.C.M. 401(c)(2), MCM; see also section 0129 for additional provisions in cases in which the forwarding officer is an accuser.

0129 SUPERIOR COMPETENT AUTHORITY DEFINED

a. Accuser in a Navy chain-of-command. Whenever a CO comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those Articles is, in the absence of specific direction to the

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contrary by a GCMCA and superior in the chain-of-command to such accuser, the Region Commander or the subordinate commander authorized to convene general or special courts-martial, as appropriate, and designated by the Region Commander for this purpose. For mobile units, the Region Commander or designated subordinate commander for this purpose is the Region Commander or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the charges. When the cognizant Region Commander or designated subordinate commander is not superior in rank or command to the accuser, or when the accuser is an Region Commander or designated subordinate commander, or if it is otherwise impossible or impracticable to forward the charges as specified above, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction; see R.C.M. 401 and 601(c), MCM.

b. Accuser in the chain-of-command of the Commandant of the Marine Corps. Whenever a CO comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those Articles is defined as any superior officer in the chain-of-command authorized to convene a special or general court-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction; see R.C.M. 401 and 601(c), MCM.

0130 PERSONNEL OF COURTS-MARTIAL

a. Military judges

(1) Detailing

(a) General court-martial judges. general court-martial judges may be detailed for trial of general and special courts-martial by the Chief Judge, Navy-Marine Corps Trial Judiciary, the circuit military judge, or the circuit military judge's designee.

(b) Special court-martial judges. Special court-martial judges may be detailed for trial of special courts-martial by the Chief Judge, Navy-Marine Corps Trial Judiciary, the circuit military judge, or the circuit military judge's designee.

(2) Qualifications and additional duties. The qualifications for military judges and additional duties to which military judges may be assigned are set forth in JAGINST 5813.4 (series).

(3) Oaths. A military judge, certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform his duties faithfully and impartially in all cases to which detailed. The oath may be taken at any time and may be administered by any officer authorized by Article 136, UCMJ, and section 0902 of this Manual to administer oaths. Once such an oath is taken, the military judge need not be resworn at any court-martial to which subsequently detailed.

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b. Counsel

(1) Detailing. Navy and Marine Corps judge advocates may be detailed as trial and defense counsel by the judge advocate's CO, OIC, or his designee. See section 0131 and 0132 for procedures relating to requests for individual military counsel.

(2) Oaths. Any military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any officer authorized by Article 136, UCMJ, and section 0902 of this Manual to administer oaths. An officer certified under Article 27(b) who has taken such an oath need not be resworn when detailed as counsel or serving as individual military counsel in any subsequent court-martial.

(3) Individual counsel, military (not certified) or civilian, requested by the accused must be sworn in each case. Detailed counsel who are not certified in accordance with Article 27(b), UCMJ, must be sworn in each case. Counsel who have taken one-time oaths administered by the Army, Air Force, or Coast Guard need not again be sworn in courts-martial convened in the Naval service. The oaths used for counsel not administered a one-time oath will be those prescribed in R.C.M. 807(b)(2) Discussion, MCM.

(4) The following oath may be used in administering a one-time oath to military counsel:

> I, _____, do swear (or affirm) that I will faithfully perform the duties of counsel in any court-martial to which I am detailed as counsel or in which I participate as individual military counsel. [So help me God.]

c. Members

(1) Detailing. See R.C.M. 503(a), MCM.

(2) Oaths. Court members may be given one oath for all cases that are referred to the court in accordance with the convening order which detailed them as members. In the event the convening order is amended, a new member may be sworn when he or she arrives. This oath may be administered by any officer authorized by Article 136, UCMJ, and section 0902 of this Manual to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in R.C.M. 807(b)(2) Discussion, MCM.

d. Reporters, interpreters, escorts, bailiffs, clerks, and guards

(1) Qualifications of court reporters. Civilian and military court reporters shall be proficient in recording in shorthand or by mechanical, voice, or other means the proceedings of, and the testimony taken before, the court or commission, and shall be able to transcribe accurately the testimony taken.

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(2) Appointment of reporters and interpreters

(a) Reporters. In each case before a general court-martial or before a military commission, a court reporter or reporters shall be detailed. In a special court-martial, a court reporter or reporters may be detailed; however, if no reporter is detailed and sworn, the special court-martial may not adjudge a bad-conduct discharge. Detailed reporters shall be proficient in recording in shorthand or by mechanical, voice, or other means the proceedings of, and the testimony taken before, the court or commission. A reporter may be detailed by the convening authority of a summary court-martial, by the officer who orders an investigation under Article 32, UCMJ, or by the officer who directs the taking of a deposition. As directed by the trial counsel of a general or special court-martial or by the summary court, the reporter shall prepare either a verbatim or a summarized record and shall preserve the complete shorthand notes or mechanical or voice record of the proceedings as provided in section 0150. Additional clerical assistants may be detailed when necessary. See R.C.M. 501(c), MCM.

(b) Interpreters. In each case before a court-martial or military commission, in each investigation conducted under Article 32, UCMJ, and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding shall appoint, when necessary, a properly qualified and sworn interpreter for the court, commission, investigation, or officer taking the deposition.

(c) Manner of appointment. Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally by him, or, at his discretion, by any other person. Such appointment may be oral or in writing.

(3) Oaths

(a) Reporters. Any court reporter, military or civilian, may be given a one-time oath. Reporters will be sworn by the trial counsel as provided in R.C.M. 807(b)(2) Discussion, MCM.

(b) Interpreters. Interpreters will be sworn by the trial counsel as provided in R.C.M. 807(b)(2) Discussion, MCM.

(4) Disqualification. Reporters, interpreters, escorts, bailiffs, clerks, and guards shall be disqualified as provided in R.C.M. 502(e)(2), MCM.

(5) Duties. The duties of reporters, interpreters, escorts, bailiffs, clerks, and guards shall be as prescribed in R.C.M. 502(e)(3), MCM, NAVMARTRIJUDICINST 5810.5, and by the military judge or trial counsel. A bailiff should be present at every trial by court-martial unless his presence is excused by the military judge.

(6) Source and expenses of court reporters and interpreters. Whenever possible, reporters, interpreters, and clerical assistants shall be detailed from either Naval or civilian personnel serving under the convening authority or officer directing the proceeding, or placed at his disposal by another officer or by other Federal agencies. When necessary, the convening authority or officer directing the proceeding may employ or authorize the employment of

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a reporter or interpreter, at the prevailing wage scale, for duty with a general or special court-martial, a military commission, an investigation under Article 32, UCMJ, or at the taking of a deposition. No expense to the Government shall be incurred by the employment of a reporter, interpreter, or other person to assist in a court-martial, military commission, Article 32 investigation, or the taking of a deposition, except when authorized by the convening authority or officer directing the proceeding. When reporters or interpreters are not available locally, the convening authority or officer directing the proceeding shall communicate with the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

e. Oaths of court-martial personnel. Where no form of oath is specified in this section, the oaths set out in R.C.M. 807(b)(2) Discussion, MCM, may be used.

0131 STANDARDS FOR DETERMINING AVAILABILITY OF REQUESTED INDIVIDUAL MILITARY COUNSEL

a. General. Article 38(b)(3)(B), UCMJ, provides that an accused has the right to be represented before a general or special court-martial or at an investigation under Article 32, UCMJ, by military counsel of his own selection if that counsel is reasonably available. Article 38(b)(7), UCMJ, provides that the Secretary concerned shall, by regulation, define "reasonably available" for purposes of paragraph (3)(B) and establish procedures for determining whether the military counsel requested by an accused under that paragraph is "reasonably available." Pursuant to the provisions of Article 38(b)(3) and (7), UCMJ, and in accordance with R.C.M. 506, MCM, the term "reasonably available" is hereafter defined, and the procedures for determining whether a military counsel requested by an accused is "reasonably available" are established. Counsel serving in the Army, Air Force, or Coast Guard, are "reasonably available" to represent a Navy or Marine Corps accused if not otherwise unavailable within the meaning of R.C.M. 506, MCM, or under regulations of the Secretary concerned for the Department in which such counsel are members. Since an accused has the right to civilian counsel in addition to detailed counsel or individual military counsel, retention of, or representation by, civilian counsel does not extinguish the right to representation by individual military counsel. It is the policy of the Secretary of the Navy that the right to individual military counsel shall be administered so as not to interfere with orderly and efficient trials by court-martial.

b. Definitions

(1) "Proceeding". As used in this section, "proceeding" means a trial-level proceeding by general or special court-martial or an investigation under Article 32, UCMJ.

(2) "Commander". For counsel assigned to a Naval Legal Service Office (NLSO), Detachment, or Branch Office, the commander of the requested counsel is defined as the CO of the cognizant NLSO; for counsel assigned to the Naval Civil Law Support Activity, the CO, Naval Civil Law Support Activity; for counsel assigned to the Navy-Marine Corps Appellate Review Activity, the OIC,

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Navy-Marine Corps Appellate Review Activity; for all other counsel assigned to OJAG, the Assistant Judge Advocate General for Military Justice (Code 02). For all other counsel, the commander is defined as the CO or head of the organization, activity, or agency with which requested military counsel will be serving at the time of the proceeding. The commander is not disqualified from acting as the commander under this rule solely because the commander is also the convening authority.

(3) "Attorney-client relationship". For purposes of this section, an attorney-client relationship exists between the accused and requested counsel when counsel and the accused have had a privileged conversation relating to a charge pending before the proceeding, and counsel has engaged in active pretrial preparation and strategy with regard to that charge. A counsel will be deemed to have engaged in active pretrial preparation and strategy if that counsel has taken action on the case which materially limits the range of options available to the accused at the proceeding.

(a) Actions by counsel deemed to constitute active pretrial preparation and strategy which materially limit the range of options available to the accused include, but are not limited to: advising the accused to waive or assert a legal right, other than simply asserting the right to remain silent, where the accused has followed such advice by waiving or asserting that right; representing the accused at a pretrial investigation under Article 32, UCMJ, dealing with the same subject matter as any charge pending before the proceeding; submitting evidence for testing or analysis; advising the accused to submit to a polygraph examination where the accused has followed such advice by so submitting; offering a pretrial agreement on behalf of the accused; submitting a request for an administrative discharge in lieu of trial on behalf of the accused; or interviewing witnesses relative to any charge pending before the proceeding.

(b) Actions that, in and of themselves, will not be deemed to constitute "active pretrial preparation and strategy" include, but are not limited to: discussing the legal and factual issues in the case with the accused; discussing the legal and factual issues in the case with another person under the protection of the attorney-client privilege, such as another defense counsel; performing legal research dealing with the subject matter of the case; representing the accused in the review of pretrial confinement under R.C.M. 305, MCM; representing the accused in appellate review proceedings under Article 70, UCMJ; or providing counseling to the accused concerning Article 15, UCMJ. These actions should be appraised under a totality of the circumstances test to determine if they constitute "active pretrial preparation and strategy."

(4) "Reasonably available". All counsel serving on active duty in the Navy or Marine Corps, certified in accordance with Article 27(b), UCMJ, and not excluded by subsections b(4)(a) through (e), below, may be determined to be "reasonably available" by the commander of the requested counsel. In making this determination, the commander will assess the impact upon the command should the requested counsel be made available. In so doing, the commander may consider, among others, the following factors: the anticipated duties and workload of requested counsel, including authorized leave; the estimated duration of requested counsel's absence from the command, including time for travel, preparation, and participation in the proceeding; any unique

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or special qualifications relevant to the proceeding possessed by requested counsel; the ability of other counsel to assume the duties of requested counsel; the nature and complexity of the charges or the legal issues involved in the proceeding; the experience level and any special or unique qualifications of the detailed defense counsel; and the information or comments of the accused and the convening authority. Counsel described in subsections b((4)(a) through (e), below, are not "reasonably available:"

(a) Counsel who are flag or general officers;

(b) Counsel who are performing duties as trial counsel; trial or appellate military judge; appellate defense or government counsel, court commissioner; principal legal advisor to a command, organization or agency having GCMCA, or the principal assistant to such legal advisor; instructor or student at a college, university, service school, or academy; or assigned as a CO, executive officer, or OIC;

(c) Counsel who are assigned to any of the following commands, activities, organizations, or agencies; Executive Office of the President; Office of the Secretary of Defense; Office of the Secretary of the Navy; Office of the Joint Chiefs of Staff; Office of the Chief of Naval Operations; Headquarters, U.S. Marine Corps; National Security Agency; Defense Intelligence Agency; OJAG; Navy-Marine Corps Appellate Review Activity; Naval Civil Law Support Activity; Office of Legislative Affairs; Office of the Defense Department or Navy Department Inspectors General; or any agency or department outside the Department of Defense; and

(d) Navy or Marine Corps counsel who are:

(1) permanently assigned to a command or organization outside the Trial Judicial Circuit where the proceeding is to be held, unless the requested counsel is permanently assigned within 500 miles of the situs of the proceedings, determined in accordance with the official Table of Distances; or

(2) permanently assigned OCONUS for proceedings in CONUS and counsel permanently assigned in CONUS for proceedings OCONUS (despite assignment within the same Trial Judicial Circuit). For purposes of this section, commands or organizations located outside of the contiguous 48 states are considered OCONUS.

(e) The foregoing geographical limitations shall not apply in cases in which an Article 32, UCMJ, pretrial investigation is ordered for a preferred charge of a capital offense for which the sentence of death may be adjudged in accordance with R.C.M. 1004, MCM, or for a national security case designated in accordance with section 0126.

(f) Notwithstanding the limitations regarding officers in charge set forth in subsection b(4)(b) above, the CO of a NLSO shall have the discretion to make personnel serving as an executive officer or as an OIC available as counsel under exceptional circumstances including, but not limited to, the complexity of a particular case or lack of experienced counsel otherwise available.

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c. Submission and forwarding of requests

(1) Submission. A request for individual military counsel shall be made in writing by the accused, or by counsel for the accused on the accused's behalf, and shall be submitted to the convening authority via the trial counsel. The burden is on the counsel for the accused to state in the request the specific location and duties of requested counsel, if known, and to state clearly whether the accused claims to have an attorney-client relationship with requested counsel regarding one or more charges pending before the proceeding, and the factual basis underlying that assertion. The request shall also state any special qualifications of requested counsel that are relevant to the case.

(2) Action by the convening authority

(a) If requested counsel is not on active duty in the Armed Forces, the convening authority shall promptly deny the request and so inform the accused, in writing, citing this provision.

(b) If the requested counsel is on active duty in the Armed Forces, the request does not claim an attorney-client relationship regarding any charge pending before the proceeding, and the requested counsel is not "reasonably available" as defined in subsection b(4)(a) through (d) above, the convening authority shall promptly deny the request and so inform the accused, in writing, citing this provision.

(c) In all other cases, the convening authority shall forward the request to the commander of the requested counsel, (i.e., the commander responsible for the counsel's daily supervision), providing the following in the forwarding endorsement: the nature of the charges; the convening authority's estimate of the duration of requested counsel's involvement in the proceeding, including time for travel, preparation and participation in the proceeding; and any other information or comments deemed appropriate.

d. Action by the commander of requested counsel

(1) Determining whether an attorney-client relationship exists. Applying the criteria enumerated in subsection b(3), above, the commander shall determine whether requested counsel has an attorney-client relationship with the accused regarding any charge pending before the proceeding.

(2) When there is an attorney-client relationship. If the commander determines that there is an attorney-client relationship regarding any charge pending before the proceeding, then the requested counsel should ordinarily be made available to act as individual military counsel without regard to whether he or she would otherwise be deemed "reasonably available" as defined in subsection b(4), above, unless there is "good cause" to sever that relationship, and provided that requested counsel is certified in accordance with Article 27(b), UCMJ. "Good cause" to sever an attorney-client relationship includes, but is not limited to, requested counsel's release from active duty or terminal leave. If requested counsel is not certified in accordance with Article 27(b), UCMJ, the commander shall promptly deny the request and so inform the accused, in writing, citing this provision. If there is "good cause" to sever an attorney-client relationship, the commander

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shall apply the criteria and procedures in subsection d(3), below.

(3) When there is no attorney-client relationship. If the commander determines that there is no attorney-client relationship regarding any charge pending before the proceeding, the following procedures apply:

(a) If the commander determines that requested counsel is not "reasonably available" as defined in subsection b(4), above, the commander shall promptly deny the request and so inform the accused, in writing, citing this provision.

(b) If the commander determines that requested counsel is "reasonably available," the requested counsel shall be made available to represent the accused at the proceeding, and the commander shall promptly inform the convening authority and the accused of this determination.

e. Administrative review. The decision whether requested counsel will be made available to act as individual military counsel is an administrative determination within the sole discretion of the commander, except as specifically provided below. If the commander declines to make requested counsel available, the accused may appeal that decision via the commander to the commander's immediate superior in command, but appeals may not be made which require action at the departmental or higher level. The basis for appeal will normally be abuse of discretion, but if the accused claims that the commander making the determination did not have authority to do so, or did so on the basis of inaccurate or incomplete information, the reviewing authority shall consider those allegations and, if warranted, direct corrective action. The appeal shall be promptly reviewed, and the commander of requested counsel, the convening authority, and the accused shall be promptly informed of the decision.

f. Approval of associate defense counsel. If individual military counsel has been made available to defend an accused at a proceeding, the detailed defense counsel normally shall be excused from further participation in the case unless the authority who detailed the defense counsel, in his or her sole discretion, approves a request from the accused that detailed defense counsel act as associate defense counsel. The seriousness of the charges, the retention of civilian defense counsel, the complexity of legal or factual issues, and the detailing of additional trial counsel are among the factors that may be considered in the exercise of this discretion. This decision is not subject to administrative review.

0132 [Reserved]

0133 ADDITIONAL MATTERS IN CONVENING ORDERS

Each convening order shall be assigned a court-martial convening order number. The order shall be personally subscribed by the convening authority and shall show his name, grade, and title, including organization or unit. A copy of the convening order shall be furnished to each person named in such order.

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0134 ADDITIONAL MATTERS IN THE CASE OF CERTAIN RESERVE COMPONENT PERSONNEL

a. Holdover of Reserve component personnel on active duty. Reserve component personnel on active duty may be extended involuntarily beyond their normal release date from active duty as a result of apprehension, arrest, confinement, investigation, or filing of charges that may result in trial by court-martial and execution of any sentence of a court-martial; see R.C.M. 202(c).

b. Holdover of Reserve component personnel on inactive duty training

(1) Reserve component personnel on inactive duty training may be retained in that status by an officer empowered to convene courts-martial for not more than 2 full working days past the end of inactive duty training if:

(a) There is probable cause to believe the accused committed an offense for which the maximum punishment authorized is confinement for more than 10 years or death;

(b) Approval, either oral or written, for holdover is obtained prior to expiration of inactive duty training from GCMCA in the chain-of-command of the accused, as designated in section 0120, and superior in grade to the requesting officer; and

(c) Immediate action is taken to order the member to active duty for trial by court-martial.

(2) An accused held over under this subsection may be placed in pretrial confinement as circumstances warrant, see R.C.M. 304 and 305. The order to active duty in such a case, however, must be approved by the Secretary, Under Secretary, or Assistant Secretary of the Navy, no later than 2 full working days past the end of inactive duty training. The request for an order to active duty under this subsection shall state the reasons why pretrial confinement is deemed necessary, see section 0123c.

(3) If necessary, the request to order an accused to active duty may be made directly by message or telephone.

c. Sentences to forfeiture or fine

(1) Forfeiture. Pay subject to forfeiture refers to the basic pay of the person plus any sea or hardship duty pay. If punishment includes reduction in grade, forfeiture shall be based on the grade to which the accused is reduced. For inactive duty Reserve component personnel ordered to active duty for punishment and released from active duty prior to collection of the total amounts to be forfeited. See DOD 7000.14-R, Volume 7A, Chapter 58, section 5806.

(2) Fine. Fines in the case of Reserve component personnel permanently assigned to an inactive duty training unit shall be based on the total amount subject to forfeiture at the time adjudged.

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d. Sentence involving restraint on liberty

(1) Personnel on inactive duty training. If the sentence pertains to Reserve component personnel on inactive duty training, restraint on liberty shall not extend beyond the normal inactive duty training period but may be carried over to subsequent periods of inactive duty training or active duty. A Reserve component member on inactive duty may not be ordered to active duty for the sole purpose of serving such punishment unless the order to active duty receives Secretarial approval, see section 0123.

(2) Personnel on active duty. If the sentence pertains to Reserve component personnel who have been ordered to active duty for disciplinary proceedings, the period of active duty may not be extended for the purpose of serving such punishment, nor may a sentence to confinement be adjudged, unless the order to active duty received Secretarial approval, see section 0123.

SUBPART C2 - TRIAL MATTERS

0135 ARTICLE 39(A), UCMJ, SESSIONS

a. Article 39(a), UCMJ, sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. The military judge of a general or special court-martial may, at an article 39(a) session, arraign the accused, hear argument and rule on motions, and receive the pleas of the accused. If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of the accused's plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately except when the plea is to a lesser included offense and the prosecution intends to proceed to trial on a greater offense.

b. Consistent with Rules for Courts-Martial 804 and 805, the military judge may order the use of audiovisual technology, such as video-teleconferencing technology, among the parties and the military judge for purposes of article 39(a) sessions. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at his location. Such technology may include two or more remote sites as long as all parties can see and hear each other.

0136 DELEGATION OF AUTHORITY TO EXCUSE MEMBERS

A general court-martial or special court-martial convening authority may delegate authority to excuse members under R.C.M. 505(c)(1), MCM, to the staff judge advocate or to a principal assistant.

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0137 PRETRIAL AGREEMENTS

a. General. The procedures and limitations set forth in R.C.M. 705, MCM, shall be followed for the negotiation and entry into a pretrial agreement between an accused and the convening authority. Appendix A-1-h, a suggested form for such agreements, must be modified as appropriate to include all of the agreements made between the accused and the convening authority. No matters "understood" between the parties should be omitted from the written agreement.

b. Major Federal offenses. The authority of court-martial convening authorities to refer cases to trial and to approve pretrial agreements extends only to trials by courts-martial. In order to ensure that such actions do not preclude appropriate action by Federal civilian authorities in cases likely to be prosecuted in the U.S. District Courts, court-martial convening authorities shall ensure that appropriate consultation under the Memorandum of Understanding between the Departments of Defense and Justice has taken place prior to trial by court-martial or approval of a pretrial agreement in cases where such consultation is required; see Appendix 3, MCM.

c. Limitations in national security cases. No official of the DON is authorized to enter into a pretrial agreement in any national security case, as defined in section 0126, without first obtaining permission to do so from the Secretary of the Navy. However, the NSCDA, as the convening authority, may enter into pretrial agreement discussions per R.C.M. 705(d), MCM. If discussions result in terms which are mutually agreeable to the convening authority and the accused, the convening authority shall request, by priority message (with information copies to the Chief of Naval Operations or Commandant of the Marine Corps, as appropriate, and OJAG (Code 17)), permission from the Secretary of the Navy to enter into a written pretrial agreement embodying those terms. The message request shall include the following:

(1) The exact text of the proposed pretrial agreement;

(2) A statement of the factual background of the offense(s);

(3) Information pertaining to the identity of the accused;

(4) A summary of the evidence which would be available for introduction at trial before findings or during any sentencing portion of trial by the Government or the accused; and

(5) A summary of the factors which warrant entry into a pretrial agreement.

d. Advanced education obligation. A service member having obligated service arising from receiving advanced education assistance must be advised prior to entering a guilty plea at a court-martial, in accordance with a pretrial agreement or otherwise, that, if separated for misconduct, he may be required to reimburse the U.S. for the cost of advanced education assistance not repaid by active duty service, as specified in the written agreement entered into with the Government prior to accepting advanced education assistance. See section 0171 and Appendix A-1-r.

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0138 AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION

a. General. See R.C.M. 704, MCM. In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government or the defense in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the immunized testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information produced under an order to testify, or any information directly or indirectly derived from such testimony or other information. The authority to grant either transactional or testimonial immunity to a witness is reserved to GCMCAs. This authority may be exercised in any case, whether or not formal charges have been preferred, and whether or not the matter has been referred for trial. The approval of the Attorney General of the U.S. on certain orders to testify may be required, as outlined below.

b. Procedure. The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government or to the defense shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, i.e., any GCMCA. Such recommendation will be forwarded by the trial counsel or defense counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have yet been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The GCMCA shall act upon such request after referring it to his staff judge advocate for consideration and advice. If approved, a copy of the written grant of immunity must be served upon the accused or his defense counsel within a reasonable time before the witness testifies. Additionally, if any witness is expected to testify in response to a promise of leniency, the terms of the promise of leniency must be reduced to writing and served upon the accused or his defense counsel in the same manner as a grant of immunity.

c. Civilian witnesses. Pursuant to 18 U.S.C. §§ 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination, then the approval of the Attorney General of the U.S., or his designee, must be obtained prior to the execution or issuance of an order to testify to such civilian witness. The cognizant GCMCA may obtain the approval of the Attorney General in such a circumstance by directing a message or letter requesting the assistance of OJAG (Code 20, via Code 17 in national security cases) in the form prescribed in section 0139.

d. Cases involving national security. In all cases involving national security or foreign relations of the U.S., the cognizant GCMCA shall forward,

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in the form prescribed in subsection section 0139, any proposed grant of immunity to OJAG (Code 20, via Code 17) for the purpose of consultation with the Department of Justice. Such cases include, but are not limited to, those enumerated in section 0126. See section 0125 regarding investigations, limitations on dispositional authority, and relations between the Departments of Defense and Justice. See section 0137 regarding pretrial agreements. See section 0159 regarding remission and suspension of sentences in national security cases.

e. Review. Under some circumstances, the officer granting immunity to a witness may be disqualified from taking convening authority action on the record of the trial before which the witness granted immunity testified. See *U.S. v. Newman*, 14 M.J. 474 (1983). A successor in command not participating in the grant of immunity would not be so disqualified under those circumstances.

f. Form of grant. In any case in which a military witness is granted transactional immunity, the GCMCA should execute a written grant substantially in the form set forth in Appendix A-1-i(1). In any case in which a military witness is granted testimonial immunity, the GCMCA should execute a written grant substantially in the form set forth in Appendix A-1-i(2).

0139 CONTENT OF IMMUNITY REQUESTS WHEN APPROVAL OF THE ATTORNEY GENERAL IS REQUIRED

a. Approval. In all cases in which approval of the Attorney General of the U.S. is required prior to the issuance of a grant of immunity, under section 0138, the cognizant GCMCA shall forward by message or letter the proposed order to testify and grant of immunity to OJAG (Code 20, via Code 17 in national security cases).

b. Order to testify. The order to testify should be substantially in the form set forth in Appendix A-1-i(3). Requests for assistance shall be in writing, should allow at least 3 weeks for consideration, and must contain the following information:

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

(2) Name and Social Security number, where possible, of the witness for whom the immunity is requested. See Appendix A-1-i(4).

(3) Name of the employer or company with which a witness is associated, or the military unit or organization to which a witness is assigned.

(4) Date and place of birth, if known, of the witness.

(5) FBI or local police file number, if any, and if known.

(6) Whether any state or Federal charges are pending against the witness and the nature of any such charges.

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

(8) A brief resume of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(a) what testimony the witness is expected to give;

(b) how this testimony will serve the public interest;

(c) whether the witness:

1 has invoked the privilege against self-incrimination; or

2 is likely to invoke the privilege;

(d) If (9)(c)2 is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(11) A statement reflecting whether or not the local District or State Attorney and the U.S. Attorney have any intention of prosecuting the witness. The names and telephone numbers of those attorneys should also be provided.

0140 POST-TESTIMONY PROCEDURE WHEN AUTHORITY TO GRANT IMMUNITY WAS OBTAINED FROM THE ATTORNEY GENERAL

a. After a witness immunized in accordance with section 0138 has testified, the following information shall be provided to the U.S. Department of Justice, Criminal Division, Immunity Unit, Washington, DC 20530, via OJAG (Code 20), and via (Code 17) in national security cases:

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

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

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

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

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0141 PERSONAL DATA AND CHARACTER OF PRIOR SERVICE OF THE ACCUSED

If otherwise admissible, trial counsel are authorized to present, and summary court-martial officers are authorized to obtain and introduce into evidence, matters set out in R.C.M. 1001(b)(2), MCM. Records of nonjudicial punishment must relate to offenses committed prior to trial and during the current enlistment or period of service of the accused, provided such records shall not extend to offenses committed more than two years prior to the commission of any offense of which the accused stands convicted. In computing the two-year period, periods of unauthorized absence as shown by the personnel records of the accused should be excluded.

0142 RELEASE OF INFORMATION PERTAINING TO THE ADMINISTRATION OF MILITARY JUSTICE AND ACCUSED PERSONS

a. General. Public information and access to military judicial proceedings promotes public awareness and confidence in the military justice system. The task of striking a fair balance among the protection of individuals accused of offenses, improper or unwarranted publicity concerning their cases, public understanding and transparency of the military justice system, and the state of discipline in the military, requires the exercise of sound judgment by both those responsible for administering military justice and those providing information to the public and the media. No statements or other information shall be furnished to the news media or any other source for the purpose of prejudicing the outcome of an accused's trial, or which could reasonably be expected to have such an effect.

b. Applicability of regulations

(1) Except as provided in subsection (2) below, these regulations apply to all persons who may obtain information as the result of duties performed in connection with the administration of military justice involving accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the imposition of nonjudicial punishment, completion of trial (court-martial sessions), or disposition of the case without trial. If nonjudicial punishment is imposed, section 0506 governs. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other nongovernmental persons or agencies. Release of information to victims and witnesses of crime is controlled by the Victim and Witness Assistance Program, SECNAVINST 5800.11 (series).

(2) Judge advocates assigned by competent authority to represent an individual client other than the Government shall consult the applicable provisions of JAGINST 5803.1 series, Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General, when making any statements concerning an accused or the subject matter of their representation of the accused. See, e.g., Rules 1.6 (Confidentiality of

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Information), 3.6 (Extra-Tribunal Statements), and 4.1 (Truthfulness in Statements to Others). See also, *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

c. Release and dissemination of information. The release and dissemination of information pertaining to military justice matters, including accused persons, shall be accomplished via the convening authority's public affairs officer. Requests for information received from representatives of news media shall be referred to the public affairs officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses. Where public interest is evident, information in subsection d. below and other appropriate information about the proceedings may be disseminated to the public.

d. Information to be disseminated without specific request. In order to facilitate public awareness of and access to the military justice system, the following information about the administration of military justice may be disseminated to the public via appropriate methods, unless contrary to national security interests. Dissemination shall be coordinated through the cognizant GCMCA and public affairs office.

(1) The grade and service of the accused if charges have been referred to court-martial or when the accused is pending an Article 32, UCMJ, investigation. The name of the accused shall not be included in routine disseminations (e.g., dockets posted on websites), but see subsection e.1. below.

(2) The scheduling (docketing) of Article 32, UCMJ, investigations and courts-martial, including the time, date, and place of the proceedings.

(3) The general nature of the proceeding (e.g., Article 39(a) - arraignment; Article 39(a) - motions; Trial)

(4) The general nature of the offense(s) (i.e., Article 86 - Absence without leave) of which individuals are accused, or suspected of, for scheduled investigations or proceedings.

e. Additional information subject to release. Upon inquiry, the following information concerning a person accused of an offense or offenses, in addition to the information in subsection d. above, may generally be released through the cognizant public affairs officer, without elaboration:

(1) In the case of referred general or special courts-martial, the accused's name, grade, age, unit, duty station, and sex. The fact that an accused has been charged with an offense may be released, but a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until proven guilty must also be included. In the case of Article 32 investigations, where the purpose of the inquiry is to develop a pre-decisional recommendation regarding disposition of charges, the accused's name shall not be released.

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(2) The identity of the apprehending and investigating agency, and the identity of the accused's counsel, if any.

(3) The fact, time, and place of the apprehension of the accused and the nature of any pre-trial restraint imposed.

(4) In the absence of a protective or other order issued by the presiding military judge upon request of any party, or otherwise, information that has been admitted into evidence or has otherwise become a part of the public record of a court-martial in open session.

(5) The result of any stage in the judicial process.

(6) The denial by the accused of any offense or offenses of which he may be accused or suspected when release of such information is approved by the counsel of the accused.

f. Prohibited information. The following information concerning a person accused or suspected of an offense or offenses may not be released, except as provided in subsection g.:

(1) Subjective opinions, observations, or comments concerning the accused's character, demeanor, credibility, expected testimony, or guilt of the offense or offenses involved.

(2) The prior criminal record, including other apprehensions, charges, or trials, or reputation of the accused.

(3) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(4) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or failure of the accused to submit to an examination or test.

(5) The identity or nature of physical evidence expected to be presented, or the identity, testimony, or credibility of possible witnesses, including victims. Particularly objectionable are statements or comments concerning information or evidence which is known, or which reasonably should be known, to be inadmissible before a court-martial.

(6) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(7) References to confidential sources or investigative techniques or procedures.

(8) Statements or opinions regarding the credibility, reputation, motives, or character of Department of Defense military or civilian officials.

(9) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative

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body or the findings or sentence of a court-martial, or otherwise prejudice the due administration of military justice either before, during, or after trial.

g. The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present.

h. Consultation with the staff judge advocate or cognizant RLSO concerning interpretation and application of these instructions is encouraged.

0143 SPECTATORS AT PROCEEDINGS

a. Courts-martial. See R.C.M. 806, MCM.

b. Article 32, UCMJ, investigation. Consistent with R.C.M. 405(h)(3) and appellate case law, R.C.M. 806(b)(2) applies to Article 32, UCMJ, investigations. Ordinarily, the proceedings of a pretrial investigation should be open to spectators. Only if R.C.M. 806(b)(2) is satisfied, should the convening authority or investigating officer direct that any part of an Article 32, UCMJ, investigation be held in closed session and that persons be excluded. In cases dealing with classified information, the investigating officer will ensure that any part of a pretrial investigation (e.g., rights advisement and any unclassified testimony) that does not involve classified information will remain open to spectators.

0144 SECURITY OF CLASSIFIED MATTER IN JUDICIAL PROCEEDINGS

a. General. Every precaution shall be taken by convening authorities, military judges, summary courts-martial, investigating officers, and trial counsel to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves classified information, the convening authority, military judge, summary courts-martial, investigating officers, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of DON Information Security Program Regulation, SECNAVINST 5510.36 (series), DON Personnel Security Program Regulation, SECNAVINST 5510.30 (series), R.C.M. 401(d) and 407(b), MCM, and M.R.E. 505, MCM.

b. Security clearance of personnel. If classified matter is to be used for a judicial proceeding, appropriate personnel security clearances in accordance with SECNAVINST 5510.30 (series) must be granted to all members of the court, members of the prosecution and defense, court reporters, interpreters, and all other persons whose presence is required when classified matter is introduced before the court. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him. The necessity for clearing the accused and the practicability of obtaining such clearance rests in the sound discretion of the convening authority and may be one of the considerations in the determination to try a particular case. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of

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this subsection have not been complied with, the military judge, investigating officer, or summary court-martial shall adjourn the court and refer the matter to the convening authority.

c. Procedures concerning spectators. See R.C.M. 806 and M.R.E. 505, MCM, which prescribe procedures necessary to prevent the dissemination of classified information to other than authorized persons.

0145 FINANCIAL RESPONSIBILITY FOR COSTS INCURRED IN SUPPORT OF COURTS-MARTIAL

a. Travel, per diem, fees, and mileage

(1) The costs of travel and per diem of military personnel and civilian employees of the DON, but excluding those of personnel attached to the Navy-Marine Corps Trial Judiciary when acting as military judges of courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel attached to the Navy-Marine Corps Trial Judiciary when acting as military judges of courts-martial will be charged to the operation and maintenance allotment of the JAG.

(2) The costs of fees and mileage of civilians other than employees of the DON will be charged to the operating budget which supports the temporary additional duty travel funds of the appropriate Navy or Marine Corps convening authority. See the Navy Comptroller Manual, Volume VII, paragraph 075133.

b. Involuntary recall and extension on active duty of members in the Reserve component. Funding for these orders should be tasked to the appropriation used on the original set of orders during which the event necessitating recall occurred. Decisions regarding funding for recall of a service member do not confer any procedural or substantive rights upon the member. The available funding sources include:

(1) Military Personnel Navy (MPN) - Active Duty for Special Work (ADSW) orders primarily supporting regular Navy commands/projects.

(2) Reserve Personnel Navy (RPN) - Inactive Duty Training (IDT), Annual Training (AT), Active Duty for Training (ADT), and ADSW orders primarily supporting Navy Reserve commands/projects.

c. Services and supplies

(1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(a) In-house costs which are direct, out-of-pocket, identifiable, and which total $100.00 or more in a calendar month; and

(b) Costs which arise under contracts which were entered into in support of courts-martial.

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(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity which provides the services or supplies.

0146 FEES OF CIVILIAN WITNESSES

a. Method of payment. The fees and mileage of civilian witnesses shall be paid by the disbursing officer of the command of a convening authority or appointing authority, or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken, when such disbursing officer is presented a properly completed public voucher for such fees and mileage signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial;

(2) Summary court-martial;

(3) Counsel for the court in a court of inquiry;

(4) Recorder or junior member of a board to redress injuries to property; or

(5) Military or civil officer before whom a deposition is taken.

b. Public voucher. The public voucher must be accompanied by a subpoena or invitational orders, see Joint Travel Regulations, Vol. 2, Ch. 6, and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing office at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as prescribed above, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the U.S., its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

c. Obtaining money for advance tender or payment. Upon written request by one of the officers listed in subsection a, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in subsection a, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

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d. Reimbursement. If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in subsection a to the effect that the payment was necessary.

e. Certificate of person before whom deposition is taken. The certificate of the person named in subsection a before whom the witness gave his deposition will be evidence of the fact and period of attendance of the witness and the place from which summoned.

f. Payment of accrued fees. The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court or place designated for taking a deposition.

g. Computation. Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

h. Non-transferability of accounts. Accounts of civilian witnesses may not be transferred or assigned.

i. Signatures. Two persons must witness signatures of witnesses signed by mark.

j. Rates for civilian witnesses prescribed by law

(1) Civilian witnesses not in Government employ. A civilian not in Government employ, who is compelled or required to testify as a witness before a Naval tribunal at a specified place, or to appear at a place where his deposition is to be taken for use before a court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. § 1821. Witness and subsistence fees are not prorated; instead, any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this subsection shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for:

(a) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(b) Travel which is performed prior to being duly summoned as a witness; or

(c) Travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

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(2) Civilian witnesses in Government employ. When summoned as a witness, a civilian in the employ of the Government shall be paid as authorized by Joint Travel Regulations.

k. Supplemental construction of section. Nothing in this section shall be construed as permitting or requiring the payment of fees to those witnesses not requested, or whose testimony is determined not to meet the standards of relevancy and materiality in accordance with R.C.M. 703, MCM.

l. Expert witnesses

(1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert based on the normal compensation paid by U.S. Attorneys for attendance of a witness of such standing in U.S. courts in the area involved. Information concerning such normal compensation may be obtained from the nearest GCMCA having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Overseas convening authorities will fix the limit of compensation to be paid the expert witness based on the normal compensation paid by U.S. Attorneys for attendance of a witness of such standing based on the area where the witness is from when the witness is from the U.S. See subsection m for fees payable to foreign nationals.

(2) The provisions of subsection j are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with R.C.M. 703(d), MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment, see 11 Comp. Gen. 504. In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

m. Payment of witness fees to foreign nationals. GCMCAs in areas other than a State of the U.S. shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

0147 WARRANTS OF ATTACHMENT

Where any party desires the issuance of a warrant of attachment, trial counsel or the cognizant staff judge advocate shall notify OJAG (Code 20) or the Commandant of the Marine Corps (JAM), as appropriate, before or concurrent with submission to a military judge, or, prior to referral, the convening authority, for issuance. This notice requirement does not confer any procedural, evidentiary, or substantive rights for any party to the proceeding. See R.C.M. 703(e)(2)(G), MCM, and DD 454 (5-00).

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0148 COURT-MARTIAL FORMS

a. List. The forms listed below are used in courts-martial by the Naval service:

DD 13151-2	Travel Claim Voucher (7-04)
DD 453	Subpoena for Civilian Witness (5-00), S/N 0102-LF-000-4530
DD 453-1	Travel Order (8-84), S/N 0102-LF-000-4535
DD 455	Report of Proceedings to Vacate Suspension (8-84), S/N 0102-LF-000-4550
DD 457	Investigating Officer's Report (8-84), S/N 0102-LF-000-4570
DD 458	Charge Sheet (5-00), S/N 0102-LF-000-4580
DD 490	Record of Trial (5-00), S/N 0102-LF-005-1201
DD 491	Summarized Record of Trial (5-00), S/N 0102-LF-005-1601
DD 494	Courts-Martial Data Sheet (Optional) (10-84), S/N 0102-LF-005-1901
DD 2329	Record of Trial by Summary Court-Martial (8-84), S/N 0102-LF-002-3290
DD 2330	Waiver/Withdrawal of Appellate Rights-Review by Court-of Military Review (8-84), S/N 0102-LF-002-3300
DD 2331	Waiver/Withdrawal of Appellate Rights-Review by Judge Advocate General (8-84), S/N 0102-LF-002-3310
DD 2702	Courts-Martial Information for Victims and Witnesses of Crime
DD 2703	Post-Trial Information for Victims and Witnesses of Crime
DD 2704	Victim/Witness Certification and Election Concerning Inmate Status

b. How to obtain forms. The DD forms are available from the Forms and Publications Segment of the Navy Supply System as cognizance symbol "I" material and may be obtained in accordance with the instructions in Navy Stock List of Forms and Publications, NAVSUP Publication 2002. Marine Corps activities will requisition forms in accordance with instructions contained in Chapter 22 of Marine Corps Unified Material Management System Manual, Marine Corps Order P4400.84. The SF forms are available from GSA Stores, Forms Supply Depots, or at www.dtic.mil/whs/directives. See NAVSO Publication 2345.

c. Forms prescribed by MCM. Where forms are prescribed by the MCM, but are not immediately available, convening authorities may improvise as necessary, using the MCM, and its appendices as guides.

SUBPART C3 - POST-TRIAL MATTERS

0149 REPORT OF RESULTS OF TRIAL

After final adjournment of a court-martial, the trial counsel or summary court-martial, as appropriate, will promptly notify the convening authority and the accused's CO of the results of the trial. If the sentence includes confinement, notification shall be in writing in the form prescribed in Appendix A-1-j, completed so as to contain all applicable information, and a copy forwarded to the CO/OIC of the brig or confinement facility in which the accused is confined. If the sentence includes forfeitures and/or reduction in

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grade, a report of results of trial must be forwarded to the appropriate Personnel Support Detachment/Unit Diary Clerk and include, if applicable, information regarding approved requests for deferments of adjudged and/or automatic forfeitures and adjudged reductions in grade. Appendix A-1-j may be used in all cases.

0150 RECORD OF TRIAL

a. Authentication of record of trial in special courts-martial not involving a bad-conduct discharge. The record of trial of a special court-martial in which a bad-conduct discharge was not adjudged, and any sentence to confinement and/or forfeitures of pay does not exceed six months, shall be authenticated by the trial counsel. Substitute authentication, when required, will be as described in R.C.M. 1104(a)(2)(B), MCM.

b. Retention of trial notes or recordings. The trial counsel in every general and special court-martial shall ensure that any notes, stenographic or otherwise, or any recordings, mechanical or voice, from which the record of trial was prepared are retained until such time as review of the case is final.

c. Security classification. Records of trial containing classified matter shall be properly classified in accordance with the provisions of R.C.M. 1103(h), MCM, and SECNAVINST 5510.36 (series). Copies of such records for delivery to the accused shall be prepared and handled in accordance with R.C.M. 1104(b)(1)(D), MCM. Attention is directed to the fact that, while SECNAVINST 5510.36 (series) requires that matter bear the overall classification of its highest component, that degree of classification is not then imparted to other components. Rather it authorizes and requires that a component be marked with the classification it warrants, if any. Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

d. Summary court-martial record of trial. A report of summary court-martial shall be completed and attached to the record of trial for all summary courts-martial conducted, except for those that result in not guilty findings or dismissal of all charges and specifications. The form prescribed in Appendix A-1-p may be used to complete this requirement and attached to DD Form 2329. Use of DD Form 2329 is not required, but is strongly recommended because it fulfills the requirements of R.C.M. 1305, MCM.

(1) The following documents shall be attached to the report of summary court-martial:

(a) Convening order;

(b) Charge sheet;

(c) Acknowledgement of rights on DD Form 2329, if executed; and

(d) Waiver of right to refuse summary court-martial, if executed.

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(2) A concise synopsis of the evidence considered by the summary court-martial on any charge and specification of which an accused has been convicted contrary to a plea of not guilty.

(3) A concise synopsis of all matters considered in aggravation and in extenuation and mitigation.

(4) All documentary and physical evidence offered at the summary court-martial, except that evidence which relates solely to an offense of which the accused is found not guilty or is dismissed. This evidence, all documentary and physical evidence offered on offenses for which the accused was found guilty, shall be attached to the report of summary court-martial where practicable; copies, photographs, or descriptions should be substituted when it is not practicable to include the original.

0151 INITIAL REVIEW AND ACTION

a. Convening authority

(1) When action may be taken. The convening authority or other person authorized to act under subsection (b) shall take action as soon as possible after preparation of the record of trial. Timely action on the court-martial is crucial to ensuring due process throughout post-trial review of the case. In all cases the convening authority or other person authorized to act shall act in a case as soon as possible, and not more than 120 days after adjournment of the court-martial.

(2) However, the convening authority, or other person authorized to act under subsection b, may take action only after the applicable time periods under R.C.M. 1105(c), MCM, have expired or the accused has waived the right to present matters under R.C.M. 1105(d), MCM, whichever is earlier. In any case which results in an acquittal on all charges and specifications, the convening authority shall not take any action approving or disapproving the findings of not guilty or any ruling amounting to a finding of not guilty; however, a promulgating order is required in accordance with R.C.M. 1114, MCM, and section 0155 of this Manual.

(3) In all cases, the convening authority shall ensure that actions taken at every step in the post-trial process are properly documented, including justification for any delay that occurs. Consult OPNAVINST 5810.4 (series), JAGINST 5810.1 (series), and JAGINST 5814.1 (series) for processing time goals.

(4) In any case where the convening authority fails to take action within 120 days of adjournment of the court-martial, the convening authority shall report, in writing, signed personally by the convening authority, this fact and the reasons why the action was not taken to OJAG (Code 20) or to the Commandant of the Marine Corps (JAM), as appropriate, and append a copy of the explanation to the record of trial.

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(5) Companion cases tried separately. In court-martial cases where the separate trial of a companion case is ordered, the convening authority shall so indicate in his action on the record in each case.

(6) Suspension of sentences. Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence, when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence adjudged.

(7) Matters to be considered. The convening authority shall follow the provisions of R.C.M. 1107(b)(3), MCM.

b. When impracticable for convening authority to act

(1) For commands in the Navy chain-of-command, if it is impracticable for the person who normally would take action as convening authority to do so, that person shall cause the record of trial to be forwarded, in the absence of specific direction to the contrary by a GCMCA superior in the chain-of-command to the convening authority, to the Region Commander or a subordinate commander authorized to convene general courts-martial and designated by the Region Commander for this purpose. For mobile units, the Region Commander or designated subordinate commander is the Region Commander or designated subordinate commander most convenient at the time of forwarding of the record. The letter or message which causes the record to be so forwarded shall contain a statement of the reasons why the normal convening authority could not act on the record and any other matters deemed appropriate by the forwarding officer.

(2) For commands in the chain-of-command of the Commandant of the Marine Corps, unless specifically directed to the contrary by a GCMCA superior in the chain-of-command, if, in the discretion of the officer who would normally take action as convening authority, it is impracticable for him to do so, that person shall cause the record of trial to be forwarded to a GCMCA. For summary and special courts-martial, this will normally be the GCMCA who is superior in the chain-of-command unless, in the discretion of the officer who would normally take action as convening authority, it will also be impracticable for that officer to take the convening authority's action. The letter or message which causes the record to be so forwarded shall contain a statement of the reasons why the normal convening authority could not act on the record and any other matters deemed appropriate by the forwarding officer.

c. Legal officer/staff judge advocate recommendation. In each general court-martial which results in a finding of guilty or each special court-martial which includes a bad-conduct discharge, the legal officer or staff judge advocate of the convening authority shall prepare a concise written recommendation to assist the convening authority in deciding what action to take on the sentence. The matters to be included in the recommendation shall be as prescribed in R.C.M. 1106, MCM, and may be submitted in a form similar to Appendix A-1-k. An award, for the purpose of R.C.M. 1106(d)(3)(C), is defined as one specified in the Precedence of Awards Table of the Navy and Marine Corps Awards Manual or other issuing Service's award regulations, and which is recorded in the accused's field service record under the authority of service record-keeping regulations. The legal officer recommendation may not be signed by an enlisted member even if an enlisted member is filling the

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legal officer billet. The staff judge advocate recommendation also may not be signed by an assistant staff judge advocate unless he or she is officially acting for an absent staff judge advocate in making that recommendation. If the convening authority has a legal officer but no staff judge advocate, the convening authority may, as a matter of discretion, and absent alternative direction by a GCMCA superior in the chain-of-command to the convening authority, request the designation of a staff judge advocate to prepare the recommendation.

0152 ACTIONS ON SPECIFIC TYPES OF SENTENCE

a. Summary courts-martial. The convening authority may apportion forfeitures of pay adjudged by a summary court-martial under Article 20, UCMJ, over one month, but as a matter of policy the period of apportionment should not exceed three months.

b. Sentences including reprimand

(1) General. Reprimands issued in execution of courts-martial sentences must be in writing. Except as otherwise prescribed in this section, sections 0114f(3)(a)-(c) apply to punitive letters issued in execution of a court-martial sentence. Punitive letters issued in execution of court-martial sentences need not be designated "For Official Use Only."

(2) By whom issued. The convening authority may issue punitive letters in execution of summary courts-martial sentences. When a convening authority orders a special or general court-martial sentence imposing a punitive letter executed, the letter shall be issued as part of the action on the record under R.C.M. 1107(f)(4)(G), MCM. Otherwise, the letter shall be issued as part of the promulgating order of the officer who subsequently directs execution of the sentence.

(3) Contents. The punitive letter shall include the time and place of trial, type of court, and a statement of the specific charges and specifications of which convicted. It shall also contain the following:

> A copy of this letter will be placed in your official record in [the Navy Personnel Command] [Headquarters, U.S. Marine Corps]. You may forward within 15 days after receipt of this action a statement concerning this letter for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time prescribed. In connection with your statement, any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement shall not contain countercharges.

(4) Procedure for issuance. The original letter shall be delivered to the accused and a copy appended to the convening authority's action, or the promulgating order of the officer subsequently directing execution of the sentence. The action, or order, should refer to the letter as follows:

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Pursuant to the sentence of the court as approved, a punitive letter is this date being served upon the accused and a copy is incorporated as part of this action.

(5) Forwarding copy to Department. Upon receipt of the accused's written statement or a written declaration that he does not desire to make a statement, an additional copy, with the statement or declaration, shall be forwarded to Commander, Navy Personnel Command (PERS-4834 for officers and PERS-832 for enlisted) or the Commandant of the Marine Corps (Code JAM for officers and Code MMSB-20 for enlisted), as appropriate.

(6) Appeals. Review, including appellate review, of punitive letters issued as part of an approved court-martial sentence will be accomplished as provided for by the UCMJ, the MCM, and this Manual. No separate appeal from these letters will be considered.

c. Automatic reduction of enlisted accused. Automatic reduction to the lowest enlisted pay grade under Article 58a, UCMJ, shall be effected in the Naval service only in accordance with this subsection, which is the regulation prescribed by the Secretary of the Navy pursuant to Article 58a(a), UCMJ.

(1) Reduction to the lowest enlisted pay grade will be automatically effected only in a case in which the sentence, as approved by the convening authority, includes, whether or not suspended, either:

(a) A punitive discharge, or

(b) Confinement in excess of 90 days, if the sentence is awarded in days, or three months, if the sentence is awarded in other than days.

(2) In his sole discretion, the convening authority may remit the automatic reduction, or may retain the accused in the pay grade held at the time of sentence or in an intermediate pay grade and suspend the automatic reduction to pay grade E-1 that would otherwise be effected under Article 58a, UCMJ, and this subsection, utilizing the forms in Appendix 16, MCM, as guides. The automatic reduction may be suspended without regard to whether any part of the approved sentence was suspended. If, however, the adjudged sentence includes a reduction in pay grade that is below the pay grade at which the convening authority desires to have the accused retained, the reduction adjudged in the sentence should be suspended for the same period as the automatic reduction is suspended. Additionally, the convening authority may direct that the accused serve in pay grade E-1 while in confinement but be returned to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement. Failure of the convening authority to address automatic reduction will result in the automatic reduction to pay grade E-1 on the date of the convening authority's action.

(3) The following forms may be used as guides for suspending automatic reduction without suspending any of the approved sentence, except reduction if included in the sentence, or reducing the accused to E-1 while in confinement and returning the accused to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement:

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(a) In the foregoing case of _____, the sentence is approved [and will be duly executed] but [the execution of so much thereof as provides for reduction to pay grade ____ and] automatic reduction to pay grade E-1 is suspended until _____, at which time, unless the suspension is sooner vacated, the suspended portions will be remitted without further action. The accused will [continue to] serve in pay grade ____ unless the suspension of the [reduction to pay grade ____ and] automatic reduction is vacated, in which event the accused at that time will be reduced to the pay grade of E-1.

(b) In the foregoing case of _____, the sentence is approved [and will be duly executed]. The accused will serve in pay grade E-1 from this date until released from confinement at which time he will be returned to pay grade ____.

d. Sentences extending to dismissal. Pursuant to the authority of Article 71(b), UCMJ, the Under Secretary of the Navy and the Assistant Secretaries of the Navy have been designated by the Secretary as empowered to approve that part of a sentence providing for dismissal of an officer or a midshipman, and may commute, remit, or suspend the sentence, or any part of the sentence, as they see fit.

0153 DISPOSITION OF RECORDS FOLLOWING CONVENING AUTHORITY ACTION

a. Summary courts-martial and special courts-martial not involving a bad-conduct discharge

(1) Review by a judge advocate. Records of trial requiring review under R.C.M. 1112, MCM, shall be forwarded to the staff judge advocate of the GCMCA designated in subsection (2). The staff judge advocate may review the record pursuant to R.C.M. 1112, MCM, or may cause another judge advocate to perform such review. Upon completion of the review, records requiring action under Article 64(b), UCMJ, and R.C.M. 1112(e)(1) or (3), MCM, shall be forwarded to the authority designated in subsection 0154.

(2) Designation of the authority who may take action under Article 64(b)

(a) For commands in a Navy chain-of-command, the authority who may take action pursuant to Article 64(b), UCMJ, shall be, in the absence of specific direction to the contrary by a GCMCA superior in the chain-of-command to the original convening authority, the Region Commander or a subordinate commander authorized to convene general courts-martial and designated for this purpose, and who could have exercised general court-martial jurisdiction over the accused at the time the court-martial was held.

(b) For commands in the chain-of-command of the Commandant of the Marine Corps, the authority who may take action pursuant to Article 64(b), UCMJ, shall be the GCMCA over the accused at the time the court-martial was held.

(3) Identification of judge advocate to whom record is forwarded for review. In all cases, the action of the convening authority in forwarding the

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record for judge advocate review shall identify the judge advocate to whom the record is forwarded by stating their official title, such as "The record of trial is forwarded to the Staff Judge Advocate, Commander, Navy Region Mid-Atlantic, for review under Article 64(a), UCMJ."

b. General courts-martial and special courts-martial which include death, dismissal, dishonorable or bad conduct discharge, or confinement for one year or longer, where the accused has not waived appellate review. In all cases in which the sentence as approved extends to death, dismissal, dishonorable or bad conduct discharge, or confinement for one year or longer, where the accused has not waived appellate review under R.C.M. 1110, MCM, the record of trial shall immediately be forwarded to OJAG (Code 40) for review under Article 66, UCMJ. The record of trial shall be sent directly to the Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047, via the most expeditious means (e.g., express mail, Federal Express, or similar means). Consult OPNAVINST 5810.4 (series), JAGINST 5810.1 (series), and JAGINST 5814.1 (series) for processing time goals. The convening authority shall provide reasons in writing for any delay in forwarding the record and append them to the record of trial.

c. Forwarding cases where the accused has waived appellate review under R.C.M. 1110, MCM

(1) General courts-martial. Upon completion of the convening authority's action in any case in which the accused has waived appellate review under R.C.M. 1110, MCM, the record of trial, including the judge advocate review of a case under R.C.M. 1112, MCM, shall immediately be sent directly to the Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047, via the most expeditious means (e.g., express mail, Federal Express, or similar means). Consult OPNAVINST 5810.4 (series), JAGINST 5810.1 (series), and JAGINST 5814.1 (series) for processing time goals. The convening authority shall provide reasons in writing for any delay in forwarding the record and append them to the record of trial.

(2) Special courts-martial. Upon completion of the convening authority's action, if the approved sentence includes a bad-conduct discharge, suspended or unsuspended, and the accused has waived appellate review under R.C.M. 1110, MCM, the record of trial shall be forwarded as prescribed in subsection a(1).

d. Records with "NMCCA" numbers assigned. Any case which has been assigned an "NMCCA" number shall be forwarded as prescribed in subsection b(1)(a), regardless of the final disposition of the case.

e. Copy to the Naval Clemency and Parole Board. If the sentence, as approved by the convening authority, includes an unsuspended punitive discharge, dismissal, or confinement for 12 months or more, one of the copies of the record of trial prepared in accordance with R.C.M. 1103(g)(1), MCM, shall be forwarded to the Director, Naval Council of Personnel Boards, Attn: Naval Clemency and Parole Board, 720 Kennon Street, SE, Rm 309, Washington Navy Yard, DC 20374-5023.

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0154 FILING AND SUPERVISION OF COURT-MARTIAL RECORDS

a. JAG supervision. Records of all trials by courts-martial in the Naval service are under the supervision of the JAG.

b. Authentication of courts-martial records of trial. In the case of any record of trial required to be forwarded to the Navy-Marine Corps Appellate Review Activity under section 0153, authentication of the record of trial shall be completed as soon as possible following the adjournment of the trial. Consult OPNAVINST 5810.4 (series), JAGINST 5810.1 (series), and JAGINST 5814.1 (series) for processing time goals. The individual authenticating the record shall provide reasons in writing for any delay in authentication and append them to the record of trial.

c. Filing of courts-martial records

(1) General courts-martial. All records of trial by general court-martial shall, immediately after completion of final action, be filed in OJAG (Code 40). See section 0153 regarding immediate forwarding of records of trial to the Navy-Marine Corps Appellate Review Activity.

(2) Special courts-martial. Records of trial by special court-martial that involve an officer accused or that include a suspended or unsuspended bad-conduct discharge, confinement for one year, or that have been returned for further action, shall, after completion of final action, be filed in OJAG (Code 40). All other special court-martial records shall be filed in the manner provided below for summary courts-martial.

(3) Summary courts-martial

(a) Shore activities where records of trial have been reviewed under Article 64, UCMJ, and section 0153 shall retain original records of proceedings for a period of two years after final action. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, Military Personnel Records, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132-5100.

(b) Fleet activities, including Fleet Air Wings and Fleet Marine Forces, where records of trial have been reviewed under Article 64, UCMJ, and section 0153 shall retain original records of proceedings for a period of three months after final action. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, Military Personnel Records, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132-5100.

d. Records containing classified information. After first coordinating with the Navy-Marine Corps Appellate Review Activity, the original of any record of trial that contains classified information shall be packaged and transmitted in accordance with the DON Information Security Program, SECNAVINST 5510.36 (series) to Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047, for filing and availability for inspection under section 0166.

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0155 PROMULGATING ORDERS - GENERAL AND SPECIAL COURTS-MARTIAL

a. When promulgating orders required. Any action taken on the proceedings, findings, or sentence of a general or special court-martial by the convening authority or any other party empowered to take such action shall be promulgated as prescribed in R.C.M. 1114, MCM. The promulgating order and convening authority's action may be contained within the same document, when personally signed by the convening authority. Separate orders shall be issued for each accused in the case of a joint or common trial. In cases which result in an acquittal on all charges and specifications, a promulgating order is required in accordance with R.C.M. 1114(c)(3), MCM, which will indicate that the case resulted in an acquittal and will include the charges and specifications, findings, and appropriate signatures.

b. When supplementary order is not required. Where the findings and sentence set forth in the initial promulgating order are affirmed without modification upon subsequent review of the case, no supplementary promulgating order is required except as necessary to order the execution of the sentence or to designate a place of confinement.

c. Supplementary orders in U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) cases. If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the approved findings and sentence have been affirmed without modification by the NMCCA and, in appropriate cases, the U.S. Court of Criminal Appeals for the Armed Forces or the U.S. Supreme Court, no supplementary court-martial order is necessary. A supplementary court-martial order shall be issued in all other cases. Such orders shall be published as follows:

(1) Supplementary orders in cases involving death sentences and dismissals are issued by the JAG by direction of the Secretary of the Navy.

(2) Other supplementary orders shall be issued by the cognizant GCMCA. In cases not reviewed by the U.S. Court of Criminal Appeals for the Armed Forces (by petition or certification), orders should be issued immediately following the accused's execution of a "Request for Immediate Execution of Discharge" (see section 0165) or upon expiration of 60 days from the date of service of the NMCCA decision upon the accused. In cases considered by the U.S. Court of Criminal Appeals for the Armed Forces or the U.S. Supreme Court, supplementary orders should be issued upon notification of completion of review by the court.

(3) All supplementary orders in NMCCA cases shall bear the "NMCM" number appearing on the NMCCA decision.

d. Form. The form of a promulgating order is prescribed in Appendix 17, MCM. In copying and including the action of the convening authority in the promulgating order, any synopsis of the accused's record and/or circumstances of the offense contained in the convening authority's action pursuant to section 0151 and/or section 0152 shall also be copied and included in the promulgating order. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case, the name, grade, and title of the subscribing officer, including the organization or unit, shall be given. Where a subordinate officer signs by direction, his

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name, title, and organization shall be followed by the words: By direction of (name, grade, title, and organization of issuing officer). A duplicate original of a promulgating order is a carbon copy as complete as the original in all respects, including the signature of the officer who signed the original, or an identical copy made by photographic or other duplicating process. A certified copy of a promulgating order is a copy bearing the statement "Certified to be a true copy" over the signature, grade, and title of an officer, or of an enlisted person in the legalman rating (Navy), or in the legal occupational field (Marine Corps), of grade E-6 or above, who has been designated in writing by the officer issuing the promulgating order.

e. Number and distribution. All initial and supplementary promulgating orders must be legible and shall be distributed as follows:

(1) Original to be attached to original record of trial. If the original record of trial has been forwarded, the original order, along with the appropriate copies as described below, shall be sent to the command or activity to which the original record of trial was forwarded.

(2) Duplicate original to be placed in the service record of the accused, unless the court-martial proceedings resulted in acquittal of all charges, disapproval of all findings of guilty, or disapproval of the sentence by the convening authority when no findings have been expressly approved by him. In cases involving Navy personnel, if applicable, forward to the Personnel Support Activity Detachment maintaining the accused's service record.

(3) Duplicate originals or certified copies:

(a) One to be attached to the original record of trial.

(b) One to be attached to each copy of the record of trial.

(c) Two to the CO of the accused if a brig or confinement facility is designated as the place of confinement; three if a disciplinary command is designated as the place of confinement. These copies should accompany the records of the accused to the place of confinement.

(d) One to Commander, Navy Personnel Command (PERS 4834 in the case of officers, or PERS 832 in the case of enlisted).

(e) One to the GCMCA over the accused at the time of trial, and one to the current GCMCA over the accused, if different. The GCMCA shall be identified by the command name.

(f) In Navy cases, one to the type commander of the accused at the time of trial, if appropriate. The type commander shall be identified by the command name.

(g) One to the Directorate of Debt and Claims Management, Denver Center (DFAS-POCE/DE), 6760 East Irvington Place, Denver, CO 80279.

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(4) Duplicate originals, certified copies, or plain copies:

(a) One to the accused.

(b) One to the CO of the RLSO at which the accused was tried.

(c) One each to the military judge, trial counsel, and defense counsel of the court-martial before which the case was tried.

(d) One to the convening authority and, if the accused was serving in a command other than that of the convening authority at the time of the alleged offense, one to the command in which he was then serving.

(e) One to each appropriate subordinate unit and any other local distribution desired.

f. Navy officer accused. In addition to the distribution requirements of subsection e, ensure the following distribution is made when the accused is a Navy officer:

(1) Copy to Officer in Charge, Personnel Support Activity Detachment, Naval Training Center Great Lakes, 315B Bronson Ave, Suite 207, Great Lakes, IL 60088, if U.S. Disciplinary Barracks, Fort Leavenworth, KS is designated as the place of confinement.

(2) Copy to Defense Finance and Accounting Service/Cleveland Center (DFAS/CL), Special Claims Department (Code FMASB), 1240 E. 9th Street, Cleveland, OH 44199, if the sentence includes forfeiture of pay which has been approved by the convening authority. Copies of all supplementary orders promulgating the results of subsequent action taken on that portion of the sentence extending to forfeiture must include DFAS/CL (Code FMASB) as a distributee. Copies of all court-martial orders extending to forfeiture of pay should be submitted through the convening authority's disbursing officer for forwarding to DFAS/CL with other non-scan documents, see MILPERSMAN 1611-010 and DOD 7000.14-R, Volume 7A.

0156 PROMULGATING ORDERS - SUMMARY COURTS-MARTIAL

In accordance with R.C.M. 1114(a)(3), MCM, the results of a trial by summary court-martial need be promulgated only to the accused. The results of any review or action on a summary court-martial under section 0153, after the initial action of the convening authority, shall be forwarded to the convening authority and to the CO of the accused for notation in the service record or service record book of the accused.

0157 SERVICE AND EXECUTION OF SENTENCES

a. General. Any part of a court-martial sentence except death, dismissal, or a dishonorable or bad-conduct discharge may be ordered executed by the convening authority or other person acting on the case when initial action is taken under R.C.M. 1107, MCM, and sections 0151 and 0152. If the accused waives appellate review or has withdrawn the appeal, the officer

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taking action under R.C.M. 1112(f), MCM, and section 0153 may order a dishonorable or a bad-conduct discharge executed as part of the action approving the sentence. In cases reviewed by the NMCCA, the GCMCA over the accused may order a dishonorable or a bad-conduct discharge executed only after appellate review is completed and the judgment is final within the meaning of R.C.M. 1209, MCM. Dismissal of a commissioned officer or a midshipman may only be ordered executed by the Secretary of the Navy or his designate, see section 0152. Only the President may order the punishment of death to be executed.

b. Place and nature of confinement

(1) Designation of places of confinement. The convening authority or other person taking the initial action on a court-martial which sentenced an accused to confinement is a competent authority to designate the initial place of confinement of Naval prisoners, see section 0169.

(2) Nature of confinement. See SECNAVINST 1640.9 (series).

c. Punitive discharge - Naval Clemency and Parole Board action

(1) In general. Notwithstanding the fact that a sentence may have been duly ordered executed, a punitive discharge may not in fact be executed until the provisions of SECNAVINST 5815.3 (series) have been complied with.

(2) Required documents. A complete copy of the record of trial, including the promulgating order and the legal officer's or staff judge advocate's recommendation, shall be forwarded in those cases in which the approved sentence includes an unsuspended punitive discharge, dismissal, or confinement for 12 months or more, see section 0153.

d. Execution of death penalty. The manner in which a sentence to death is to be carried out shall be determined by the Secretary of the Navy.

e. Hard labor without confinement. R.C.M. 1003(b)(6), MCM, authorizes special and general courts-martial to sentence enlisted members to hard labor without confinement for up to three months. The immediate commander of an accused designates the amount and character of the hard labor to be performed, which should conform to the guidelines governing extra duties imposed as punishment under Article 15, UCMJ; see paragraph 5c(6) of Part V, MCM.

0158 REMISSION AND SUSPENSION

a. Authority to remit or suspend sentences in general courts-martial and special courts-martial in which the sentence includes a bad-conduct discharge. Pursuant to Article 74(a), UCMJ, and subject to the limitations in section 0159, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the JAG, and all general court-martial convening authorities over the command to which the accused is attached are designated as empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. A sentence to death may not be suspended.

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b. Authority to remit or suspend sentences in summary courts-martial and special courts-martial in which the sentence does not include a bad-conduct discharge. Notwithstanding the limitations in section 0159, if the accused's commander has authority to convene a court-martial of the kind which adjudged the sentence, that commander may suspend or remit any part of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial which does not include a bad-conduct discharge. See R.C.M. 1108(b), MCM.

c. Probationary period. Suspensions shall conform to the conditions, limitations, and termination requirements of R.C.M. 1108(c)-1108(e), MCM. See also R.C.M. 1109(b)(4), MCM, which governs interruptions of a period of suspension due to unauthorized absence of the probationer or the commencement of proceedings to vacate suspension. For instructions concerning voluntary extension of enlistment for the purpose of serving probation, see SECNAVINST 5815.3 (series).

d. Liaison with Naval Clemency and Parole Board. Officers taking clemency action pursuant to the authority of this section on any sentence including a punitive discharge or confinement for 12 months or more shall coordinate such action with the Naval Clemency and Parole Board under the provisions of SECNAVINST 5815.3 (series). This obligation to coordinate does not limit the authority any officer otherwise has to take clemency action.

0159 LIMITATIONS ON AUTHORITY TO REMIT AND SUSPEND SENTENCES

a. Cases involving national security. No official of the DON, other than the Secretary of the Navy, may remit or suspend, pursuant to Article 74(a), UCMJ, and R.C.M. 1107, MCM, any part or amount of the approved sentence in any case designated as a national security case, in accordance with section 0126.

b. Flag and general officers. Notwithstanding subsection 0158, the JAG may not remit or suspend, pursuant to Article 74(a), UCMJ, any part or amount of the sentence in any case involving a flag or general officer.

c. Officers and warrant officers. Notwithstanding subsection 0158, GCMCAs may not remit or suspend, pursuant to Article 74(a), UCMJ, any part or amount of the sentence in any case involving an officer or warrant officer.

d. Authority of the CO, Navy-Marine Corps Appellate Leave Activity, and the CO, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS. The CO, Navy-Marine Corps Appellate Leave Activity, and the CO, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS (or its successor command), may:

(1) effect actions directed by the Secretary following clemency review;

(2) remit uncollected forfeitures of court-martial prisoners returning to duty;

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(3) remit confinement, not in excess of five days, to facilitate administration, by adjusting dates of transfer upon completion of confinement. Early releases in excess of 5 days may be granted when specifically authorized by the Chief of Naval Personnel for Navy prisoners, or the Commandant of the Marine Corps for Marine Corps prisoners; and

(4) exercise other authority specifically delegated in writing by the Secretary.

0160 VACATION OF SUSPENSION OF SENTENCE

a. Review of confinement of probationer pending vacation proceedings. The officers appointed under section 0127 shall also conduct reviews of confinement under R.C.M. 1109(c)(4), MCM.

b. Notice of proceedings. In the case of courts-martial under review, immediate notice of the vacation of any punishment shall be made to the command or activity conducting the review. In the case of courts-martial in which the approved sentence includes a punitive discharge, dismissal, death, or confinement of 1 year or more, and appellate review has not been waived, notice shall be made to both the Navy-Marine Corps Appellate Review Activity (OJAG (Code 40)) and the NMCCA.

c. Filing of report of proceedings. The original record of any proceedings in connection with vacation of suspension under R.C.M. 1109, MCM, shall be included in the record of trial. See R.C.M. 1103(b)(3)(M). If the authority ordering the vacation is not in possession of the record of trial, that authority shall transmit the record of the vacation proceedings to the command or activity to which the original record of trial was forwarded for inclusion in the record of trial. In the case of vacation of a suspended general court-martial sentence or of a suspended special court-martial sentence including a bad-conduct discharge, two copies of the record of any vacation proceedings shall be forwarded with the original of such vacation proceedings.

d. Execution of vacated punishments. The execution of a vacated punishment is subject to the restrictions of section 0157 and R.C.M. 1113(c), MCM.

0161 REQUEST FOR WITHDRAWAL OF APPELLATE REVIEW

a. Article 66 cases. A request for withdrawal from appellate review of a case forwarded for review under Article 66, UCMJ, will ordinarily be granted by NMCCA if the case is pending before the NMCCA. Requests, including a copy of the charge sheet, shall be forwarded to Navy-Marine Corps Appellate Review Activity, (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047.

b. Article 69(a) cases. A request for withdrawal from appellate review of a case forwarded for examination under Article 69(a), UCMJ, will ordinarily be granted, unless the examination in OJAG has reached the point where it would be impracticable to return the case to the field for review under

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Article 64, UCMJ, and R.C.M. 1112, MCM. Requests, including a copy of the charge sheet, shall be forwarded to Navy-Marine Corps Appellate Review Activity, (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047.

0162 APPLICATION FOR RELIEF – ARTICLE 69(b)

a. General. Article 69(b), UCMJ, provides that "The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (Article 66) may be modified or set aside, in whole or in part, by the JAG on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence." An application by the accused for such a review must be filed in OJAG (Code 20) within two years of the convening authority's action on the sentence, unless the accused establishes good cause for failure to file within that time.

b. Time limitations. In order to be considered by the JAG, an application for relief must be placed in military channels if the applicant is on active duty, or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority. An application not filed in compliance with these time limits may be summarily rejected, or may be considered if the JAG determines, in his sole discretion, that "good cause" for failure to file within the time limits has been established by the applicant.

c. Submission procedures. Applications for relief shall be submitted in writing to OJAG (Code 20). If the accused is on active duty, the application shall be submitted via the applicant's CO, the command that convened the court, and the command that reviewed the case under Article 64(a) or (b), UCMJ. If the original record of trial is held by the command that reviewed the case under Article 64(a) or (b), UCMJ, it shall be forwarded as an enclosure to the endorsement. If the original record of trial has been filed in the National Personnel Records Center (see section 0154), the endorsement will include all necessary retrieval data (accession number, box number, and shelf location) obtained from the receipt returned from the National Personnel Records Center to the sending activity. This endorsement shall also include information and specific comment on the grounds for relief asserted in the application, and an opinion on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to OJAG (Code 20).

d. Contents of application. All applications for relief shall contain:

(1) full name of the applicant;

(2) Social Security number and branch of service, if any;

(3) present grade if on active duty or retired, or "civilian" or "deceased," as applicable;

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(4) address at time the application is forwarded;

(5) date of trial;

(6) place of trial;

(7) command title of the organization at which the court-martial was convened (convening authority);

(8) command title of the officer exercising Article 64 review authority over the applicant at the time of trial, if applicable;

(9) type of court-martial which convicted the applicant, and sentence adjudged;

(10) general grounds for relief, which must be one or more of the following:

(a) newly discovered evidence;

(b) fraud on the court;

(c) lack of jurisdiction over the accused or the offense;

(d) error prejudicial to the substantial rights of the accused; or

(e) appropriateness of the sentence.

(11) an elaboration of the specific prejudice resulting from any error cited. Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires;

(12) any other matter which the applicant desires to submit;

(13) relief requested;

(14) facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in subsection b, if applicable; and

(15) if the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application.

(16) the applicant's copy of the record of trial will not be forwarded with the application for relief, unless specifically requested by the JAG.

e. Signatures on application. Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian, or other person with

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a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

0163 PETITION FOR NEW TRIAL - ARTICLE 73

Petitions for a new trial under Article 73, UCMJ, shall comply with the form and procedures set forth in R.C.M. 1210, MCM, and shall be sent directly to the Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047.

0164 NOTIFICATION TO ACCUSED OF COURT OF CRIMINAL APPEALS DECISION

a. Current address of the accused. Upon receipt of the decision of the NMCCA, and when in accordance with the provisions of R.C.M. 1203(d)(1), MCM, the JAG elects not to certify the case to the U.S. Court of Appeals for the Armed Forces, OJAG (Code 40) will use the address provided by the accused if the accused is on appellate leave, or, if the accused has not provided an address and is on appellate leave or is on active duty, will request from the GCMCA over the command to which the accused is attached the current address of the accused. The GCMCA will provide the current military address of the accused if the accused is on active duty, or the latest address listed for the accused in the accused's official service record or service record book. If requested, the address shall be provided to OJAG (Code 40) by the most expeditious means.

b. Promulgation package. Using the address obtained as detailed above, a "promulgation package" consisting of the accused's copy of the NMCCA decision containing the endorsement notifying the accused of his right to petition for review by the U.S. Court of Criminal Appeals for the Armed Forces will be forwarded directly to the accused by first-class certified mail. If the accused is in a military confinement facility, absent contrary directions from the accused, the package will be forwarded to the CO or OIC of the confinement facility for delivery to the accused. The CO/OIC of such facility should ensure that the certificate of personal service is completed and returned to OJAG (Code 40).

c. Copies of decision. Copies of the NMCCA decision will be forwarded to the GCMCA over the accused. Additionally, copies of the NMCCA decision will be forwarded to the original GCMCA and the convening authority, as applicable, for information and appropriate distribution, as a matter of courtesy, to the military judge, trial counsel, and defense counsel.

d. Change in address. Notice of any change in address of the accused due to transfer, appellate leave, or any reason shall be immediately given to OJAG (Code 40).

e. Completion of appellate review. Notification of the completion of appellate review, i.e., expiration of the 60-day appeal period if no petition for review is filed, or final review by the U.S. Court of Appeals for the Armed Forces or the U.S. Supreme Court, will be forwarded by OJAG (Code 40) to the cognizant GCMCA for compliance with sections 0157 and 0165, if applicable.

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0165 REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE

a. General. Prior to completion of appellate review, an accused may request immediate execution of the unexecuted portion of his sentence, following completion of the confinement portion thereof, if any, in those cases in which the sentence as affirmed by the NMCCA:

(1) includes an unsuspended punitive discharge; and

(2) either does not include confinement, or the confinement portion thereof has been or will be completed prior to 60 days from the date the accused is served with a copy of the NMCCA decision.

b. Conditions of approval. Such requests may be approved by the GCMCA subject to the following conditions:

(1) that the accused has received a copy of the decision of the NMCCA in his case;

(2) that the accused has had fully explained to him the right to petition the U.S. Court of Appeals for the Armed Forces for grant of review;

(3) that the accused does not have an appeal pending before the U.S. Court of Appeals for the Armed Forces;

(4) that the accused does not intend to appeal to the U.S. Court of Appeals for the Armed Forces but, nevertheless, understands that the request for immediate release does not affect the right to petition the U.S. Court of Appeals for the Armed Forces;

(5) that the accused has consulted counsel of his own choice; and

(6) that Naval Clemency and Parole Board review, under the provisions of SECNAVINST 5815.3 (series), if applicable, has been completed.

c. Execution of unexecuted portion of sentence. Upon approval of such requests, the GCMCA shall order the unexecuted portion of the sentence to be duly executed.

d. Form of request for immediate execution of discharge. The prescribed form is set forth in Appendix A-1-l. Three signed copies of the request shall be transmitted to OJAG (Code 40).

0166 INSPECTION OF RECORD OF TRIAL CONTAINING CLASSIFIED INFORMATION

In any courts-martial where classified information has been deleted or withdrawn from the accused's copy of the record of trial, the accused may personally inspect the original record of trial in OJAG after final review in the case has been completed, subject to the requirements of SECNAVINST 5510.36 (series). Applications for such inspections may be submitted to the Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047.

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0167 SETOFF OF INDEBTEDNESS OF A PERSON AGAINST PAY

a. Courts-martial decisions. When the U.S. has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in DOD Financial Management Regulation, DOD 7000.14-R, Volume 5, Chapter 2, section 0203, have been convicted by court-martial, the amount of such loss constitutes an indebtedness to the U.S. which will be set off against the final pay and allowances due such person at the time of dismissal, discharge, or release from active duty.

b. Administrative determinations. In addition, when the Government suffers a loss of money and competent authority has administratively determined that the loss occurred through the fraud, forgery, or other unlawful acts of such persons as described in subsection a, the amount of such loss shall be set off as described in subsection a. "Competent authority," as used herein, shall be the CO of such persons and the administrative determination shall be made through an investigation pursuant to the JAGMAN and approved on review by a GCMCA.

c. Army and Air Force property. When the money or property involved belongs to the Army or the Air Force, and such service determines liability through the procedures provided by the authority of 37 U.S.C. § 1007 and demands setoff against the final pay and allowances of any Naval service personnel, setoff shall be effected in accordance with subsection a.

d. Voluntary restitution. Immediate recovery action may be instituted on the basis of a voluntary offer of the member to make restitution of all or part of any indebtedness to the Government. The voluntary offer constitutes assumption of pecuniary responsibility for the loss and, as such, is sufficient to authorize checkage of current pay, if required, to collect the amount of the indebtedness. See also 10 U.S.C. § 6161 and SECNAVINST 7220.38 (series) concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein shall be construed as precluding setoff against final pay in other cases when such action is directed by competent authority.

PART D - MISCELLANEOUS

0168 APPREHENSION BY CIVILIAN AGENTS OF THE NAVAL CRIMINAL INVESTIGATIVE SERVICE

Pursuant to the provisions of R.C.M. 302(b)(1), MCM, and under the authority of Article 7(b), UCMJ, any civilian agent of NCIS who is duly accredited by the Director, NCIS, and who is engaged in conducting an investigation, with or without prior approval or a request from a competent command, within the investigative jurisdiction of the NCIS as established in departmental directives, may apprehend, if necessary, persons subject to the UCMJ or to trial thereunder, upon reasonable belief that an offense has been committed

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and that the person apprehended committed it. A person so apprehended must be taken promptly before his CO or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer, except where such an apprehension is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. Such a civilian agent, even though not conducting an investigation relating to the person apprehended, may also apprehend a person subject to the UCMJ upon observation of the commission of a felony or a misdemeanor amounting to a breach of the peace occurring in the agent's presence. A person so apprehended must be delivered promptly to his CO or other appropriate military authority.

0169 AUTHORITY TO PRESCRIBE REGULATIONS RELATING TO THE DESIGNATION AND CHANGING OF PLACES OF CONFINEMENT

The Chief of Naval Personnel and the Commandant of the Marine Corps are authorized to issue joint regulations, as required, relating to the designation and the changing of places of confinement of Naval prisoners, the transfer of Naval prisoners among military confinement facilities, and transfers from military facilities to civilian confinement facilities. See SECNAVINST 1640.9 (series), BUPERSINST 1640 (series), and MCO 1640.3.

0170 FORMS SUPPLEMENTING THE MILITARY RULES OF EVIDENCE

a. Interrogations. See M.R.E. 301-305. Appendix A-1-m contains a suggested format which may be utilized by investigative personnel in cases in which criminal suspects desire to waive their rights concerning self-incrimination, and to make statements. This format is designed as a guide, and its use is not mandatory.

b. Search and seizure. See M.R.E. 311-316. Appendices A-1-n and A-1-o contain suggested formats for recording information pertaining to authorization for searches, with instructions, and the granting of consent to search. These formats are designed as guides in processing problems which may arise in connection with cases involving searches and seizures. Use of these formats, even as guides, is not mandatory, but rests within the discretion of local commanders.

0171 RECOUPMENT OF ADVANCED EDUCATION ASSISTANCE

a. Authority. 10 U.S.C. § 2005 authorizes the Secretary of the Navy to require a service member to enter a written agreement to serve on active duty for a specified period as a condition of that service member receiving advanced education financial assistance from the Government. If the service member fails to complete, voluntarily or as a result of misconduct, the term of active duty service specified in the agreement, the Secretary of the Navy can require that service member to reimburse the U.S. for the cost of advanced education assistance not repaid by active duty service as specified in the written agreement. 10 U.S.C. § 2005 also requires that a recipient of advanced education assistance be advised of the recoupment possibility before

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the recipient submits a request for voluntary separation or makes a personal decision regarding administrative, nonjudicial, or judicial action resulting from alleged misconduct.

b. Advisement. Accordingly, a service member having obligated service arising from receiving advanced education assistance must be advised prior to electing to accept nonjudicial punishment or summary court-martial, requesting voluntary separation, waiving an administrative discharge board, or entering a guilty plea at a court-martial, in accordance with a pretrial agreement or otherwise, that he may be required to reimburse the U.S. for the cost of advanced education assistance not repaid by active service as specified in the written agreement entered into with the Government prior to accepting advanced education assistance. See Appendix A-1-r.

c. Application. Recoupment applies to those individuals who have received, at Government expense, education or training above the secondary level. Applicable programs may include, but are not limited to, the U.S. service academies, Reserve Officer Training Corps, the Funded Law Education Program, the Armed Forces Health Professions Scholarship Program, other post-graduate programs, and enlisted educational programs such as the Enlisted Education Advancement Program.

d. No additional rights. This requirement is not intended to confer rights on an individual but to preserve for the Government the possibility of recoupment. Failure to advise a member of the possibility of recoupment, as discussed in subparagraphs a and b above, before the member submits a request for retirement or makes a personal decision regarding administrative, nonjudicial, or judicial action shall not create any cause for relief against an otherwise valid nonjudicial, judicial, or administrative proceeding, but may prevent recoupment.

0172 CROSS-REFERENCE TO SECRETARIAL OR JAG REGULATIONS IMPLEMENTING THE MCM

The following section provides a cross-reference of those provisions contained in the MCM, and the sections in this Chapter or other instructions which implement those provisions.

R.C.M.	Implementation
104(b)(2)(B)	JAGINST 5803.1 (series)
106	Chapter VI
108	JAGINST 5810.2 (series)
109	JAGINST 5803.1 (series)
201(d)(2)	0108b, 0124
201(f)(2)(C)(iii)	0122a
204(a)	0107b, 0123
304(f)	SECNAVINST 1640.9 (series)
305(f)	0127b
305(i)(2)	0127d
306(c)(2)	0102-0105
403(b)(5)	0122a
404(e)	0122a
405(c)	0122a
407(a)(5)	0122a

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R.C.M.	Implementation
407(b)	0126
501(c)	0130d
502(c)	0130a
502(d)(2)	No implementation
502(e)	0130d
503(b)	0130a(1)
503(c)	0130b
504(b)(1)and(2)	0120, 0121
504(d)(3)	0133
505(c)(1)(B)(i)	0136
506(b)(1)and(2)	0131
703(e)(2)(D)	0146
703(e)(2)(G)	0147
704(c)	0138-0140
705(a)	0137
804(d)(2)	0127a
807(b)(1)(A)	0130
908(b)(2)and(6)	JAGINST 5810.2 (series)
910(a)(2)	No implementation
1001(b)(2)	0141
1103(b)(1)(B)	0150b
1103(g)(1)	0153b
1103(j)	No implementation
1104(a)(2)(A)	0150a
1104(b)(1)(D)(iii)(a)	0166
1107(a)	0151b
1107(b)(2)	0151a(1)
1107(f)(4)(C)	0157b, 0169
1108(b)and(d)	0158a and b
1109(c)(4)	0160a
1110(g)(3)	0161
1111(a) and (b)	0153-0155
1112	0153a, 0161
1112(e)(3)	0153
1112(g)(3)	0154
1113(c)(1)and (2)	0157a and c
1113(d)(1)(A)	0157d
1113(d)(2)(C)	0157b, 0169
1114(a)(1)	0155
1114(b)(2)(A)	0155
1114(f)	0155
1201(b)(3)(B)	0162
1201(c)	0158, 0159
1203(d)(1)	0164
1206(a)	0152d
1206(b)(1)	0158, 0159
1206(b)(2)	JAGINST 5810.2 (series)
1301(a)	No implementation
1301(g)	0122a, 0133
1302(a)(4)	0120c, 0121b
1305(a)	0150
1305(d)(3)	0153
1306(c)	0153a

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M.R.E.	Implementation
305(d)(2)	0131
312(g)	No implementation
315(d)(1)	No implementation
315(d)(2)	No implementation
315(f)(2)	No implementation
315(h)(2)	No implementation
317(c)(2),(3)	DODD 5505.9

Part V - NJP	Implementation
1f(5)	0108b
2a, b, and c	0106
3	0108c
5a	0111, 0112
5c(1)	0114
5c(4) and (5)	0111, 0112
5c(6)	No implementation
5g	0113
7b	0117
7f(5)	0117d
8	0119, 0141

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NONPUNITIVE LETTER OF CAUTION

Date_____

From: Commander, U.S. Pacific Fleet
To: ENS _____ L. _____, SC, USN/3100

Subj: NONPUNITIVE LETTER OF CAUTION

Ref: (a) Report of investigation into discrepancies in the ship's store returns for the first quarter of fiscal year 20__, in USS _____ (_____)
(b) R.C.M. 306, MCM [insert current edition]
(c) JAGMAN, 0105

1. Reference (a) is the record of an investigation by _____ to inquire into certain discrepancies in the ship's store returns for the first quarter of fiscal year 20__ in USS _____.

2. [Here insert a precise statement of the relevant events and circumstances for which the letter of caution is issued.] From the foregoing, it is apparent that you performed your duties in a careless manner. Such carelessness contributed to the improper operation of the ship's store in USS _____. Accordingly, you are hereby administratively cautioned pursuant to references (b) and (c).

3. This letter, being nonpunitive, is addressed to you as a corrective measure. It does not become a part of your official record. You are advised, however, that in the future you will be expected to exercise greater care in the performance of your duties in order to measure up to the high standard of performance of duty required of all officers in the Surface Force. Commander, U.S. Pacific Fleet, trusts that the instructional benefit, which you will receive from the experience, will cause you to become a more proficient Naval officer.

[Signature]

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(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED ATTACHED TO OR EMBARKED IN A VESSEL
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, SSN _____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, [insert current edition], you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ Article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects considered as evidence against you that the commanding officer has examined

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in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be witness(es) against you, if their statements will be relevant and the witness(es) are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the U.S. for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

ELECTION OF RIGHTS

4. Knowing and understanding all of my rights as set forth in paragraphs 1 through 3 above, my desires are as follows:

a. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive a personal appearance. (Check one below)

_____ I do not desire to submit any written matters for consideration.

_____ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

b. Elections at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____

_____

_____

_____

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_____ I request that my nonjudicial punishment proceeding be open to the public.

_____ (Signature of witness and Date)

_____ (Signature of accused and Date)

_____ (Name of witness)

_____ (Name of accused)

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(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD CANNOT BE USED IN AGGRAVATION IN EVENT OF LATER
COURT-MARTIAL UNLESS LAWYER SERVES AS PERSONAL REPRESENTATIVE
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, SSN _____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, [insert current edition], you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ Article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial you will have the right to be represented by counsel. Regardless of whether you accept or refuse nonjudicial punishment, you could be processed for administrative separation based on your misconduct. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

_____

_____

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

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b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects considered as evidence against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may offer testimony or evidence against you, if their statements will be relevant and the witness(es) are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the U.S. for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

ELECTION OF RIGHTS

5. Knowing and understanding all of my rights as set forth in paragraphs 1 through 4 above, my desires are as follows

a. Right to refuse nonjudicial punishment. (Check one)

_____ I refuse nonjudicial punishment. I understand that, upon refusal of nonjudicial punishment, charges could be referred against me for trial by summary, special, or general court-martial, and that I also have the option of refusing trial by summary court-martial. I also understand that my refusal of nonjudicial punishment does not preclude administrative action against me.

_____ I accept nonjudicial punishment. I am advised that acceptance of nonjudicial punishment does not preclude further administrative action

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against me. This may include being processed for an administrative discharge which could result in an other than honorable discharge.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

b. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive a personal appearance. (Check one below)

_____ I do not desire to submit any written matters for consideration

_____ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

c. Elections at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____

_____

_____

_____

_____

_____ I request that my nonjudicial punishment proceeding be open to the public.

_____ _____

(Signature of witness and Date) (Signature of accused and Date)

_____ _____

(Name of witness) (Name of accused)

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(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD MAY BE USED IN AGGRAVATION IN EVENT OF LATER COURT-MARTIAL
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, SSN _____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, [insert current edition], you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ Article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial you will have the right to be represented by counsel. Regardless of whether you accept or refuse nonjudicial punishment, you could be processed for administrative separation based on your misconduct. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

_____

_____

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

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b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects considered as evidence against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may offer testimony or evidence against you, if their statements will be relevant and the witness(es) are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the U.S. for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

5. In order to help you decide whether or not to demand trial by court-martial or to exercise any of the rights explained above should you decide to accept nonjudicial punishment, you may obtain the advice of a lawyer prior to any decision. If you wish to talk to a lawyer, a military lawyer will be made available to you, either in person or by telephone, free of charge, or you may obtain advice from a civilian lawyer at your own expense.

ELECTION OF RIGHTS

6. Knowing and understanding all of my rights as set forth in paragraphs 1 through 5 above, my desires are as follows:

a. Lawyer. (Check one or more, as applicable)

_____ I wish to talk to a military lawyer before completing the remainder of this form.

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_____ I wish to talk to a civilian lawyer before completing the remainder of this form.

_____ I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

_____ _____
(Signature of witness) (Signature of accused)

_____
(Date)

(Note: If the accused wishes to talk to a lawyer, the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to do so.)

_____ I talked to _____ , a lawyer, on _____.

_____ _____
(Signature of witness) (Signature of accused)

_____
(Date)

b. Right to refuse nonjudicial punishment. (Check one)

_____ I refuse nonjudicial punishment. I understand that, upon refusal of nonjudicial punishment, charges could be referred against me for trial by summary, special, or general court-martial, and that I also have the option of refusing trial by summary court-martial. I also understand that my refusal of nonjudicial punishment does not preclude administrative action against me based on my misconduct.

_____ I accept nonjudicial punishment. I understand that acceptance of nonjudicial punishment does not preclude further administrative action against me. This may include being processed for an administrative discharge which could result in an other than honorable discharge.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

c. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive a personal appearance. (Check one below)

_____ I do not desire to submit any written matters for consideration.

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_____ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

d. Elections at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____

_____

_____

_____

_____

_____ I request that my nonjudicial punishment proceeding be open to the public.

_____ _____

(Signature of witness and Date) (Signature of accused and Date)

_____ _____

(Name of witness) (Name of accused)

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CAPTAIN'S MAST/OFFICE HOURS GUIDE

(Note: The formalities prior to and at the termination of the captain's mast or office hours normally are determined by custom and tradition in the Navy and Marine Corps.)

CO: You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

_____

_____

_____

You do not have to make any statement regarding the offense(s) of which you are accused or suspected, and any statement made by you may be used as evidence against you.

(Note: If it is reasonably foreseeable that the accused's statements during the captain's mast/office hours proceedings may be considered for introduction in evidence in a later court-martial, an explanation of rights and a waiver, in the format of Appendix A-1-m of the JAGMAN, will have to be obtained from the accused, during the hearing, before proceeding further.)

CO: You are advised that a captain's mast/office hours is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by court-martial do not apply at captain's mast/office hours.

CO: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing. (Note: This statement will be either JAGMAN Appendix A-1-b, A-1-c, or A-1-d.)

CO: Do you understand this statement and do you understand the rights explained therein?

ACC: _____.

CO: Do you have any questions about them or do you wish to make and requests?

ACC: _____.

_____.

CO: [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

WIT: _____.

OR

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CO: [To witness(es) who has/have previously provided written statement(s) when accused and commanding officer both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: _____.

CO: Do you have anything to add to or change in your statement?

WIT: _____ .

CO: (To accused) Would you like me to ask any further questions of this witness?

ACC: _____.

CO: (After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?

ACC: _____.

CO: (If the answer is "no," offer the accused the opportunity to examine the evidence.)

CO: Is there anything that you wish to offer? (If the answer is "yes," permit the accused the opportunity to call his witnesses, make a personal statement in defense, and present other evidence.)

ACC: _____.

CO: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: _____.

CO: Is there anything that you wish to offer that would lessen the seriousness of (this) (these) offense(s) or mitigate them?

ACC: _____.

CO: (To witness) What can you tell me about (accused's name) performance of duty?

WIT: _____.

CO: (To accused) Is there anything else you would like to present?

ACC: _____.

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CO: I impose the following punishment:

_____.

My decision to impose this punishment was based on my determination that you committed the minor offenses of:

_____.

You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title). Your appeal must be made within a reasonable time, which is normally 5 days. Following this hearing, _____ will advise you more fully of this right to appeal. Do you understand?

ACC: _____.

CO: You are dismissed.

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(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS

I, _____, SSN _____, assigned or attached to _____, have been informed of the following facts concerning my rights of appeal as a result of (captain's mast) (office hours) held on _____:

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Five working days, excluding weekends and holidays, after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances that I believe will make it extremely difficult or not practical to submit an appeal within 5 working days, I should immediately advise the officer imposing punishment of such circumstances and request an appropriate extension of time which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust; or

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the pay grade of E-4 or above, or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

_____ _____
(Signature of Accused and Date) (Signature of Witness and Date)

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PUNITIVE LETTER OF REPRIMAND

(Date)

From: Commander, U.S. Fleet Forces Command
To: Lieutenant _____ T. _____, U.S. Navy, _____/1100
Via:

Subj: PUNITIVE LETTER OF REPRIMAND

Ref: (a) Report of investigation of collision between USS _____ (___), and SS _____, which occurred, on ____ April 20____
(b) Article 15, UCMJ
(c) Para. 5 of Part V, MCM, [insert current edition]
(d) JAGMAN, 0114

1. Reference (a) is the record of an investigation convened by Commander, U.S. Fleet Forces Command, to inquire into the collision between USS _____ (_____) and SS _____ on ____ April 20_____. The collision occurred in the Atlantic Ocean about 60 miles east of Norfolk, Virginia. You were a party to the investigation and were accorded your rights as such. [As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to refuse imposition of nonjudicial punishment and you have elected to accept nonjudicial punishment.]

2. [Here insert a precise statement of all relevant events and circumstances of the offense or offenses in violation of an Article or Articles of the Uniform Code of Military Justice for which the letter of reprimand is issued.]

3. Your actions clearly show that you were derelict in the performance of your duties as Officer of the Deck, USS _____, on the morning of ____ April 20____ in that you negligently failed to:

a. Maintain USS _____ on a safe course as required by U.S. Navy Regulations (1990).

b. Employ all means and devices available to you for detecting and avoiding danger from collision as required by USS _____ Standing Night Orders and U.S. Navy Regulations (1990).

c. Inform your commanding officer when you made a course and speed change at about 6 minutes before the collision as required by U.S. Navy Regulations (1990).

4. Pursuant to references (b), (c), and (d) you are hereby reprimanded for your negligence in the performance of duty as set forth above.

[Here insert final paragraphs prescribed by 0114f(3)(d).]

[Signature]

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DEPARTMENT OF THE NAVY
(GENERAL/SPECIAL) COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
(_____) JUDICIAL CIRCUIT
(See JAGMAN 0137)

U.S. **v.** **(NAME OF ACCUSED)** **RATE/RANK USN/USMC**	**MEMORANDUM** **OF** **PRETRIAL AGREEMENT** **(Part I)**

I, (Rate/Rank, Name, Service), the accused in a (general/special) court-martial, in exchange for good consideration and after thorough consultation with my defense counsel, do fully understand and agree to the following terms and conditions:

1. I agree to enter pleas of GUILTY as indicated below. I do so fully understanding that the Convening Authority may approve any sentence adjudged by the court-martial, but shall order executed only that sentence which does not exceed the lesser of the sentence contained in Part II of this agreement (the Maximum Sentence Limitation Appendix) or the sentence adjudged by this court-martial.

[Note: If agreement is for the Convening Authority to refer the charges and specifications to a special court-martial vice a general court-martial (i.e., a "no cap special court-martial"), such agreement may be addressed either here or in Part II (the Maximum Sentence Limitation Appendix), at the discretion/election of the parties. See sample provision in Sentence Limiting Appendix attached].

2. This agreement (Parts I and II) constitutes all the conditions and understandings of both the Government and myself regarding the pleas in this case. There are no other agreements, written or otherwise.

3. I understand, and the sentence limitation portion of this agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and/or restraint, (3) forfeiture and/or fine, (4) reduction in pay grade, and (5) any other lawful punishment.

4. I am satisfied with my defense counsel in all respects and consider (him/her/them) qualified to represent me at this court-martial.

5. I am entering into this agreement freely and voluntarily. Nobody has made any attempt to force or coerce me into making this agreement or into pleading guilty.

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6. I have been fully advised by my defense counsel of, and I fully understand and comprehend the meaning and effect of, my guilty pleas and all attendant effects and consequences, including the possibility that I may be processed for administrative discharge from the (U.S. Navy/Marine Corps). I understand that such an administrative discharge could result in an other-than-honorable characterization of service, unless otherwise limited by this agreement, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved for any reason.

[Note: If the agreement includes the accused waiving an administrative discharge board, such waiver may be addressed either here or in paragraph 15, *infra*, the "Specially Negotiated Provisions," at the discretion/election of the parties. See sample provision in "Specially Negotiated Provisions" section, *infra*].

7. I understand that I may ask permission to withdraw any of my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw any of my pleas of guilty after they have been accepted, but before sentence is announced, and the military judge may, at his/her discretion, permit me to do so.

8. I understand that this pretrial agreement may become null and void, and the Convening Authority can withdraw from this agreement, in the event that any of the following occur:

a. I fail to plead guilty as required by this agreement;

b. The court refuses to accept any of my pleas of guilty;

c. The court sets aside any of my pleas of guilty for whatever reason, including upon my request, before sentence is announced;

d. I fail to satisfy any material term of this agreement; or

e. I fail to plead guilty as required by this agreement at a rehearing should one occur.

9. I understand that if this agreement becomes null and void, then my offer to plead guilty and enter into this agreement cannot be used against me in any way in determining whether I am guilty or not guilty of the charges alleged against me at this court-martial or in determining an appropriate sentence.

10. I understand that if the approved sentence includes a punitive discharge or confinement in excess of 90 days (or 3 months), whether the sentence is suspended or not, Article 58a of the UCMJ and § 0152 of the JAGMAN require that I suffer automatic administrative reduction in pay grade to the lowest enlisted paygrade, E-1, unless the Convening Authority takes action to remit or suspend the automatic reduction.

11. I understand that if the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, whether the sentence is suspended or not, Article 58b of the UCMJ requires the automatic imposition of forfeitures of (2/3 pay per month) (all pay and

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allowances) due during any period of confinement served, unless the Convening Authority takes action to waive or defer the automatic forfeiture provision. Forfeitures, whether adjudged or automatic, take effect upon the Convening Authority's action in this case or 14 days after sentence is adjudged, whichever is earlier. I understand that I may request in writing that the Convening Authority defer execution of forfeitures until the Convening Authority takes action in this case. I also understand that I may request that automatic forfeitures be waived by the Convening Authority for a period up to six (6) months from the date of the Convening Authority's action. Finally, I understand that if I am held in confinement beyond my End of Active Obligated Service (EAOS) date, then I will not receive any pay or allowances by operation of law, regardless of the terms of this agreement.

12. I understand that should I commit any misconduct (i.e., any act or omission in violation of the UCMJ which constitutes a material breach of this agreement) after the signing of this pretrial agreement but before the date of trial, such misconduct may be the basis for the Convening Authority to unilaterally withdraw from the pretrial agreement, rendering the entire agreement null and void. I further understand that if I commit misconduct after the date of trial, but before the date of the Convening Authority's action, the Convening Authority may, after first complying with notice and hearing requirements consistent with Article 72, UCMJ, and R.C.M. 1109, MCM, withdraw from the sentence limitation provisions of this agreement. Should the Convening Authority withdraw from the sentence limitation provisions of this agreement based on misconduct occurring after the date of trial but before action is taken in my case, I understand that any provisions in the pretrial agreement relating to suspension of any aspect of my sentence would become null and void in all respects, and that the entire sentence adjudged at my court-martial may be approved and imposed upon me.

13. I also understand that should I commit any misconduct after the date of the Convening Authority's action, or violate any of the conditions of suspension stated in this agreement during the period in which any part of my sentence is suspended, the Convening Authority may, after complying with the procedures set forth in R.C.M. 1109, MCM, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the Convening Authority, and that previously suspended portion of my sentence could be imposed upon me.

14. I understand that I may be placed on appellate leave under the provisions of Article 76a of the UCMJ, if the sentence, as approved, includes an unsuspended punitive discharge. I understand that an individual placed into an appellate leave status will <u>normally</u> not receive any pay or allowances. I further understand that receipt of pay and/or allowances while in an appellate leave status will depend on the amount of accrued leave I have accumulated and chose to use, and on the sentence awarded by this court-martial. (Furthermore, I agree that, should a punitive discharge be adjudged, I will submit, within ___days from the date of the conclusion of my trial, a written request to be placed on appellate leave.)

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15. Specially Negotiated Provisions

As consideration for this agreement, and after having fully discussed the issue with my defense counsel:

[Examples of Common Specially Negotiated/Alternative Provisions:]

[Elect trial by Military Judge alone**]**

I agree to request trial and sentencing by military judge alone, and waive my right to a trial by members, including enlisted members.

[Article 32 Waiver as part of agreement/general court-martial only**]**

I agree to waive my right to an Article 32, UCMJ, investigation. I fully understand the nature and purpose of an Article 32, UCMJ, investigation, and the rights that I would have at such a hearing. I understand that upon acceptance of this agreement, the charge(s) and specification(s) may be referred to trial by general court-martial without an Article 32, UCMJ, investigation or hearing.

["Bareback" Specials - This provision may be included either in the "Specially Negotiated Provisions" section in Part I of the agreement, or in Part II of the agreement (the Maximum Sentence Appendix) at the discretion of the parties.]**

I fully understand that, in return for my pleas of guilty as indicated below, the only consideration that I will receive under this agreement is the referral of the charges and specifications in my case to a special court-martial vice a general court-martial. I also understand that in the event that I fail to plead guilty as indicated or fail to comply with any of the terms of this agreement, or if the agreement becomes null and void for any reason, then the Convening Authority is free to convene an Article 32, UCMJ, investigation concerning these charges and, ultimately, to refer all charges and specifications for trial before a general court-martial.

[Withdraw language to which accused pled Not Guilty**]**

I understand and agree that, in return for my plea(s) of guilty, and following the military judge's acceptance of my plea(s) as set forth below, the Convening Authority will withdraw the language and/or charges and specifications to which I have pled not guilty. After announcement of the sentence by the military judge, the withdrawn language and/or charges and specifications will be dismissed by the Convening Authority with/without prejudice.

[Government going forward on not guilty pleas**]**

I understand and agree that the Convening Authority, through the assigned trial counsel, may go forward on the charges and/or language to which I have entered pleas of not guilty.

[Waive Administrative Discharge Board**]**

I agree to waive any administrative discharge board that is based on any act or omission reflected in the charge(s) and specification(s) that is/are the subject of this agreement. I understand that any administrative discharge will be characterized in accordance with service regulations and may be under other-than-honorable conditions. I fully understand the nature and purpose of an administrative discharge board and the rights that I would have at such a

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board.

[RESTITUTION: Select from one of the following 3 paragraphs**]**

[1. Has means to make restitution prior to date of trial**]**

I agree to make restitution by [cashier's check/money order] in the amount of _____, made payable to the economic victim of my misconduct, (Name(s) of Victim(s)), prior to the date of trial. I expressly represent that I will have the economic means to make restitution prior to the date of trial. The [cashier's check/money order] will be delivered to the trial counsel at least one day prior to the date of trial. I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to withdraw from this agreement, rendering it null and void.

[OR]

[2. Will have means to make restitution prior to a certain date**]**

I agree to make restitution by [cashier's check/money order] in the amount of _____, made payable to the economic victim of my misconduct, (Names(s) of Victim(s)) by DD MMM YYYY. I expressly represent that I will have the economic means to make restitution by DD MMM YYYY and understand that my paying restitution to the victim(s) is a material term of this agreement. The [cashier's check/money order] will be delivered to the trial counsel or staff judge advocate on that date. I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to withdraw from this agreement, rendering it null and void, or may serve as the basis for the Convening Authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence.

[OR]

[3. Make restitution in installments**]**

I agree to make restitution in the amount of _____, to the economic victim of my misconduct, (Name(s) of Victim(s)), by DD MMM YYYY. I expressly represent that I will have the economic means to make full restitution by DD MMM YYYY. I will provide the trial counsel or staff judge advocate with a [cashier's check/money order] made payable to (Name(s) of Victim(s)), no later than the second working day following the payday on the 1st and 15th of each month, in the amount of _____. These partial payments will begin on DD MMM YYYY and will be completed by DD MMM YYYY. I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to withdraw from this agreement, rendering it null and void, or may serve as the basis for the Convening Authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence.

[Testify W/Grant of Immunity in another case**]**

If I am provided a grant of testimonial immunity, I agree to testify truthfully if called as a witness in the case of U.S. v._____. I further agree to fully and truthfully cooperate in the court-martial process, to include interviews with appropriate law enforcement authorities and the trial and defense counsel involved in the case, as well as any other reasonable request made of me.

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[Testify W/O Grant of Immunity in another case**]**

Even if I am not provided a grant of testimonial immunity, I agree to testify truthfully if called as a witness in the case of U.S. v._____. I further agree to fully and truthfully cooperate in the court-martial process, to include interviews with appropriate law enforcement authorities and the trial and defense counsel involved in the case, as well as any other reasonable request made of me.

[Stipulation of Fact: Select from one of the following 2 paragraphs**]**

[1. Stipulation is an appendix to the agreement**]**

I agree to enter into the Stipulation of Fact contained in Appendix I. I agree that the facts contained therein are true and may not be contradicted by either side. I further agree not to object to the stipulation's admission during the providence inquiry/on the merits/ and/or during the pre-sentencing proceeding.

[OR]

[2. Stipulation to be agreed upon after PTA is signed*]**

I agree to enter into a stipulation of fact, which describes the facts and circumstances surrounding the offenses to which I am pleading guilty. I understand that the failure of the parties to reach a mutually agreed upon stipulation of fact may result in either side withdrawing from this agreement. I further agree not to object to the mutually agreed upon stipulation's admission during the providence inquiry/on the merits/ and/or during the pre-sentencing proceeding.

[Witness Considerations**]**

[Call certain witnesses only**]**

I intend to request the presence of (Name(s) of witness(es)) (as a witness/as witnesses) at my court-martial. Provided that the Convenineg Authority agrees to produce these witnesses, I will not request any other witnesses. This provision has not interfered with my selection of witnesses or in presenting a (defense/case in extenuation and mitigation).

[Call no witness or call only local witnesses**]**

I agree not to request, at government expense, the presence of any witness located (out of the area)(outside a 100-mile radius of_____). This provision does not interfere with my ability to present an effective (defense/case in extenuation and mitigation). I intend to use alternative means to present this material. (The government specifically agrees not to object to the admission into evidence of written statements in extenuation and mitigation from witnesses located (out of the area)(outside a 100-mile radius of_____).

[Stipulation of Testimony**]**

I agree to stipulate to the testimony of the following witnesses: _____. I understand that the stipulation does not admit the truth of the testimony, which may be attacked, contradicted, or explained in the same way as any other testimony.

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[Trial Date Consideration**]**

I agree, and am fully prepared, to go to trial and offer to go to trial no later than _____. I understand that I will not be deemed to have breached this agreement if the judiciary cannot schedule my trial by this specific date.

[Motion Consideration - the specific motions waived need to be specified - the language "all waivable motions" is unacceptable**]**

I agree not to raise a motion pursuant to R.C.M. _____ to _____. I have not been compelled to waive my right to due process, the right to challenge the jurisdiction of the court-martial, the right to a speedy trial, the right to raise the issue of unlawful command influence, or any other motion that cannot be waived.

[Agreement Not to Object to Evidence Offered **]**

I (and the Government) agree not to object to [service record documents, chain-of-custody documents, lab reports, etc…] being offered into evidence on the merits (in sentencing) on the basis of (hearsay, authenticity, etc.).

[Conditional Plea(s) -- Only for Case Dispositive Issues **]**

I agree, upon written consent of the Government and approval of the military judge, to enter a conditional plea of guilty in writing as to (list applicable Charges and Specifications), preserving the right, on further review or appeal, to review of any adverse determination on my motion (specify nature of the motion). I understand that if I prevail on further review or appeal, I will be allowed to withdraw my conditional plea(s) of guilty in accordance with R.C.M. 910(a)(2), MCM.

[Confessional Stipulation **]**

I agree to enter into a confessional stipulation of fact in writing as to all elements of (list applicable Charge(s) and Specification(s)) to which I have entered pleas of not guilty. I understand that a confessional stipulation is tantamount to a guilty plea when it establishes directly, or by reasonable inference, every element of a charged offense and when I and my counsel do not present any evidence to contest any potential remaining issue(s) on the merits of my case. I also understand that this confessional stipulation will relieve the Government and the trial counsel of the burden of proving my guilt beyond a reasonable doubt as to this Charge and Specification (these Charges and Specifications) and that I may be found guilty of this offense/these offenses based solely upon this stipulation and be subjected to the punishment(s) authorized for it/them.

PLEAS OF THE ACCUSED

CHARGE	PLEAS
Charge I: Violation of Article _____	GUILTY/NOT GUILTY
Specification____: Language of Spec.	GUILTY/NOT GUILTY

[Examples of Pleas w/exceptions and substitutions**]**

Spec __:	Unauthorized absence terminated by apprehension.	Guilty, except for the words "terminated by apprehension"; of the excepted words, Not Guilty; of the Specification as excepted, Guilty.

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Spec: __:	Between 22 Jun and 29 Jun 03, at an unknown location, wrongfully use cocaine.	Guilty, except for the words "unknown location" substituting therefore the words "Norfolk, Virginia"; of the excepted words, Not Guilty; of the substituted words, Guilty; of the Specification as excepted and substituted, Guilty.
Charge __:	Violation of Art 123a	Not Guilty, but guilty of a violation of Article 134.
Spec __:	Uttering checks w/out sufficient funds	Not Guilty, but guilty to the LIO of dishonorable failure to maintain funds.

By my signature below, I acknowledge that I have read this agreement completely, discussed it with my counsel, understand it in all respects, and am prepared to abide by its terms.

_____ _____
Date (Rate/Rank, Name, Service), Accused

_____ _____
Date (Rank, Name, Service), Defense Counsel

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

_____ _____
Date (Rank, Name, Service of Convening Authority)
(Title of Convening Authority)

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DEPARTMENT OF THE NAVY
(GENERAL/SPECIAL) COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
(_____) JUDICIAL CIRCUIT

U.S. **v.** **(NAME OF ACCUSED)** **RATE/RANK USN/USMC**	**MEMORANDUM** **OF** **PRETRIAL AGREEMENT:** **(Part II)** **SENTENCE LIMITATIONS**

[PARAGRAPH 1. Punitive Discharge]

1. **Punitive Discharge**: May be approved as adjudged.

[OR - Mitigate DD to BCD - GCMs only]
1. **Punitive Discharge**: May be approved as adjudged. However, if a dishonorable discharge is adjudged, the Convenineg Authority agrees to approve only a bad conduct discharge.

[OR - Disapprove any punitive discharge]
1. **Punitive Discharge:** If adjudged, any punitive discharge will be disapproved.

[OR - Suspend the discharge for specified number of months after CA's action]
1. **Punitive Discharge**: May be approved as adjudged. However, if a punitive discharge is adjudged, it will be suspended for a period of _____ months from the date of the Convenineg Authority's action, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

[OR - Suspend the discharge until EAOS]
1. **Punitive Discharge**: May be approved as adjudged. However, if a punitive discharge is adjudged, it will be suspended until the accused's end of obligated service, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

[OR - Suspend discharge until ADSEP completed]
1. **Punitive Discharge**: May be approved as adjudged. However, if the accused voluntarily waives his right to an administrative separation proceeding, the punitive discharge will be suspended until the administrative separation process is completed and the accused has received his DD Form 214, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

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[PARAGRAPH 2: Confinement]

2. **Confinement**: May be approved as adjudged.

[OR - Disapprove Confinement]
2. **Confinement**: If adjudged, any confinement will be disapproved.

[OR - Place a cap on confinement with the excess suspended]
2. **Confinement**: May be approved as adjudged. However, all confinement in excess of ___ days/months/years will be suspended for the period of confinement served plus _____ months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action. This agreement constitutes my request for, and the Convenineg Authority's approval of, deferment of all confinement suspended pursuant to the terms of this agreement. The period of deferment will run from the date of sentencing until the date the Convenineg Authority acts on the sentence.

[OR - Place a cap on confinement with the excess suspended only if a punitive discharge is awarded and accused requests appellate leave]
2. **Confinement**: May be approved as adjudged. However, if a punitive discharge is adjudged and I request voluntary appellate leave, all confinement in excess of ___ days/months/years will be suspended for the period of confinement served plus _____ months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

[Paragraph 3. Forfeitures and Fines]

3. **Forfeitures or Fines**: May be approved as adjudged.

[OR - Disapproval all adjudged and defer/waive all automatic]
3. **Forfeitures or Fines**:

a. **Adjudged Forfeitures**: All adjudged forfeitures will be disapproved.

b. **Automatic Forfeitures**: Automatic forfeitures (in the amount of $_____ per month) will be deferred provided that the accused establishes and maintains a dependent's allotment in the total amount of the deferred forfeiture amount during the entire period of deferment. This agreement constitutes the accused's request for, and the Convenineg Authority's approval of, deferment of automatic forfeitures (in the amount of $_____ per month) pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeitures would otherwise become effective under Article 58b(a)(1), UCMJ, until the date the Convenineg Authority acts on the sentence. Further, this agreement constitutes the accused's request for, and the Convenineg Authority's approval of, waiver of automatic forfeitures (in the amount of $ ____ per month). The period of waiver will run from the date the Convenineg Authority takes action on the sentence for six months. The deferred and waived forfeitures shall be paid to _____, who is my dependent.

c. **Fines**: If adjudged, the fine will be disapproved.

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[OR - Suspend adjudged and defer/waive automatic]
3. **Forfeitures or Fines:**

a. **Adjudged Forfeitures:** May be approved as adjudged; however adjudged forfeitures (in the amount of $_____ pay per month for ____ months) will be suspended for _____ months from the date of the Convenineg Authority's action, at which time, unless sooner vacated, all suspended adjudged forfeitures will be remitted without further action. This agreement constitutes the accused' request for, and the Convenineg Authority's approval of, deferment of all adjudged forfeitures (in the amount of $_____ pay per month for _____ months), which are to be suspended pursuant to the terms of this agreement and would otherwise become effective under Article 57(a)(1), UCMJ. The period of deferment will run from the date adjudged forfeitures would otherwise become effective until the date of the Convenineg Authority's action.

b. **Automatic Forfeitures:** Automatic forfeitures (in the amount of $ ____ per month) will be deferred provided that the accused establishes and maintains a dependent's allotment in the total amount of the deferred forfeiture amount during the entire period of deferment. This agreement constitutes the accused' request for, and the Convenineg Authority's approval of, deferment of automatic forfeitures (in the amount of $ _____ per month) pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeitures would otherwise become effective under Article 58b(a)(1), UCMJ, until the date the Convenineg Authority acts on the sentence. Further, this agreement constitutes the accused' request for, and the Convenineg Authority's approval of, waiver of automatic forfeitures (in the amount of $ ____ per month). The period of waiver will run from the date of the Convenineg Authority's action and shall not exceed six (6) months. The deferred and waived forfeitures shall be paid to _____, who is my dependent.

c. **Fines:** May be approved as adjudged; however, the adjudged fine will be suspended for ____ months from the date of the Convenineg Authority's action, at which time, unless sooner vacated, the suspended portion of the fine will be remitted without further action.

[OR - Fine will be mitigated to forfeitures]
c. **Fines:** May be approved as adjudged; however, the adjudged fine will be mitigated to forfeitures, which the accused shall pay in the amount of $_____ pay per month **[note: cannot be more than 2/3 pay per month if special court-martial]** for _____ months (until the entire amount of the originally adjudged fine has been satisfied).

[Paragraph 4. Reduction]

4. **Reduction:** May be approved as adjudged.

[OR - Disapprove adjudged/remit automatic]
4. **Reduction:**

a. **Adjudged Reduction:** May be approved as adjudged; however, any adjudged reduction (below the pay grade of E-____) will be disapproved.

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b. **Automatic Reduction:** The automatic reduction (below the pay grade of E-____) will be remitted.

[OR - Suspend adjudged and automatic]
4. **Reduction:**

a. **Adjudged Reduction:** May be approved as adjudged; however, any adjudged reduction (below pay grade ____) will be suspended for _____ months from the date of the Convenineg Authority's action, at which time, unless sooner vacated, the suspended reduction will be remitted without further action. This agreement constitutes the accused' request for, and the Convenineg Authority's approval of, deferment of that adjudged reduction which is to be suspended pursuant to the terms of this agreement and would otherwise become effective under Article 57(a)(1), UCMJ. The period of deferment will run from the date the adjudged reduction would otherwise become effective until the date of the Convenineg Authority's action.

b. **Automatic Reduction:** The automatic reduction in pay grade (below pay-grade ____) will be suspended for _____ months from the date of the Convenineg Authority's action, at which time, unless sooner vacated, the suspended automatic reduction will be remitted without further action.

[Paragraph 5. Other lawful punishments]

5. **Other lawful punishments:** May be approved as adjudged.

[OR - Disapprove other lawful punishments]
5. **Other lawful punishments:** If adjudged, any other lawful punishment will be disapproved.

[OR - Suspend other lawful punishments]
5. **Other lawful punishments:** May be approved as adjudged; however any **[fine, restriction, hard labor without confinement, etc.]** will be suspended for _____ months from the date of the Convenineg Authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

[Paragraph 6. Bareback Special Provision - Special Courts-Martial only]

6. I fully understand that, in return for my pleas of guilty as indicated below, the only consideration that I will receive under this agreement is the referral of the charges and specifications in my case to a special court-martial vice a general court-martial. I also understand that in the event that I fail to plead guilty as indicated or comply with any of the terms of this agreement, or if the agreement becomes null and void for any reason, then the Convenineg Authority is free to convene an Article 32, UCMJ, investigation concerning these charges and, ultimately, to refer all charges and specifications for trial before a general court-martial.

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I fully understand, and have discussed with my counsel, how this agreement will effect any sentence that I may be awarded by the court-martial.

Accused:_____ Date:_____
NAME OF ACCUSED
RATE/RANK USN/USMC

Defense Counsel: _____ Date:_____
Name of Counsel
Rank USN/USMC

The foregoing pretrial agreement is approved.

_____ Date:_____
(Convening authority signature, or signature of individual acting "by direction")

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ORDER TO TESTIFY
(See JAGMAN 0138)

IN THE MATTER OF

(Accused's Name)	GRANT OF TRANSACTIONAL IMMUNITY
(Rate) (Unit)	
(Armed Force)	

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of [set forth a full identification of the accused and, if charges have been preferred, the substance of all specifications preferred.]

2. In consideration of your testimony as a witness in the matter described in paragraph (1), you are hereby granted immunity from prosecution for any offense connected with the offenses(s) described in paragraph (1) about which you testify under oath.

3. It is understood that this grant of immunity from prosecution is effective only upon the condition that you actually testify as a witness. It is further understood that this grant of immunity from prosecution extends only to the offense or offenses described in paragraph (1) in which you were implicated and about which you testify under oath, and does not extend to prosecution for perjury, giving a false statement, or otherwise failing to comply with an order to testify in this matter.

4. This grant of immunity is made under the authority granted me under Rule for Courts-Martial 704, Manual for Courts-Martial, [insert current edition], as a general courts-martial convening authority.

_____
Signature

_____
Grade, Title

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IN THE MATTER OF

(Accused's Name)	GRANT OF TESTIMONIAL IMMUNITY
(Rate) (Unit)	
(Armed Force)	

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of [set forth a full identification of the accused and, if charges have been preferred, the substance of all specifications preferred.]

2. In consideration of your testimony as a witness in the matter described in paragraph (1), you are hereby granted immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from the other information you provide) against you in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with an order to testify in this matter.

3. It is understood that this grant of immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from the other information you provide) against you in any criminal case is effective only upon the condition that you testify under oath as a witness in the matter described in paragraph (1).

4. This grant of immunity is made under the authority granted me under Rule for Courts-Martial 704, Manual for Courts-Martial, [insert current edition], as a general courts-martial convening authority.

_____

Signature

_____

Grade, Title

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IN THE MATTER OF_____)

_____) ORDER TO TESTIFY

_____)

_____)

To: (Witness to whom immunity is to be granted)

1. As an officer empowered to convene general courts-martial and pursuant to the provision of 18 U.S.C. §§ 6002 and 6004, I hereby make the following findings:

a. That (name of witness) possesses information relevant to the pending trial by general court-martial of _____, and that the presentation of his testimony at this trial is necessary to the public interest; and

b. That it is likely that (Name of witness) would refuse to testify on the basis of his privilege against self-incrimination if subpoenaed to appear as a witness.

2. On the basis of these facts, and pursuant to 18 U.S.C. § 6004, I hereby order (Name of witness) to appear and testify before the general court-martial convened for the trial of _____. In accordance with 18 U.S.C. § 6002, no testimony or other information given by (Name of witness) (or any information directly or indirectly derived from such testimony or other information) can be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

3. This order is issued with the approval of the Attorney General of the U.S. set forth in enclosure 1 annexed hereto.

_____
Signature

_____
Grade, Title

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PRIVACY ACT NOTIFICATION

Authority: 18 U.S.C. § 6004; Executive Order 12473; R.C.M. 704, MCM, [insert current edition]

Principal Purpose: The requested information will be provided to law enforcement agencies in order to expedite review of this request for immunity, and is requested for the purpose of allowing those agencies the opportunity to review the propriety of granting immunity to you in this case.

Routine Use: This information will be provided to law enforcement agencies, both State and Federal, in the performance of their duties under law to review this request for immunity.

Disclosure is Voluntary: Your provision of this information is voluntary; however, your failure to provide the requested information may result in delay or denial of the granting of immunity to you in this case.

_____ _____

Signature Date

_____

Witness

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REPORT OF RESULTS OF TRIAL

From:

Subj: REPORT OF RESULTS OF TRIAL

1. Pursuant to R.C.M. 1101(a) and 1304(b)(2)(f)(v), MCM, [INSERT CURRENT EDITION], notification is hereby given in the case of U.S. v. [RANK] [FIRST] [LAST] [SSN], a trial by [GENERAL] [SPECIAL] courts-martial occurring at [LOCATION], convened by [COMMAND] [UIC].

2. Offenses, pleas, and findings:

a. Charges & Specifications / Pleas & Findings
(with description of offense(s), including whether convicted of lesser included offenses)

b. Any preferred charge withdrawn before or at trial: __NO __YES
(include a brief description)

_____
_____
_____

c. Partial acquittal based on mental incompetence: __NO __YES
(include a brief description of offenses charged)

_____
_____
_____

[Note: If an accused is found incompetent to stand trial or not guilty of all charges and specifications by reason of lack of mental responsibility and a Report of Results of Trial would not otherwise be completed, then the trial counsel must inform the Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, DC 20374-5047.]

3. Forum: Judge alone _____ Members _____ Enlisted Members _____

4. Sentence adjudged (if specific sentence provision does not apply indicate "NA"):

Discharge (Dismissal, DD, BCD)	
Confinement	
Hard Labor w/out confinement	

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Reduction	
Forfeiture	
Reprimand	
Other	

5. Date sentence adjudged: _____. Adjudged forfeitures, adjudged reduction in grade, and automatic forfeitures, if any, become effective _____ (14 days after date sentence was announced) unless indicated otherwise in paragraph 8, below, or unless written notice of deferment by the Convenineg Authority is received by authorities with responsibility for the accused's service and pay records. Absent pertinent direction to the contrary in paragraph 8, below, or such written notice of deferment, action by those authorities in this case giving effect to the adjudged and automatic sentence, when applicable, must occur by the second date in this paragraph. Trial counsel must be provided the originals of such written approved deferments for inclusion in the record of trial (R.C.M. 1103, MCM).

6. Automatic forfeitures apply: Yes ____ No____. See paragraph 8, below, for the specific sentence to be given effect in this case, consistent with paragraph 5, above.

a. General court-martial _____ (forfeiture of all pay and allowances while confined)

b. Special court-martial _____ (2/3 pay while confined)

7. Credits to be applied to confinement, if any:

a. Pretrial Confinement: _____ days (see note below)

b. Judicially-ordered credits: _____ days

c. Total credits: _____ days

8. Terms of pretrial agreement concerning sentence, if any (YES/NO response only):

MJ alone:	Confinement limitation:
Non-capital referral:	Forfeiture limitation:

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Restitution:	Reduction in grade limitation:
Referral to lower forum:	Allotment to family:
Cooperation:	Allotment to victim:
Deferment of confinement:	Other: (brief description)

9. Upon Convenineg Authority's action in this case, sex offender notifications may be required per 42 U.S.C. § 14071: ____ No ____ Yes

See DODI 1325.7, Administration of Military Correctional Facilities and Clemency and Parole Authority, Enclosure 27, for a list of offenses requiring sex offender notifications.

10. Collection of a DNA sample from the accused is required per 10 U.S.C. § 1565, _____No _____Yes. If collection is required, collection may be effected before the Convenineg Authority acts pursuant to Under Secretary of Defense for Personnel and Readiness memo of 18 April 2005.

(Signature)
Trial Counsel

Distribution:
Convening Authority
Commanding Officer of accused
CO/OIC of brig (if confinement adjudged)
PDS/Unit Diary Clerk
Disbursing Office
Record of trial
Officer exercising general courts-martial jurisdiction

[Note: Each day of pretrial confinement shall be counted as a day of pretrial confinement, except that, if the sentence includes confinement, the day on which sentence is announced shall not be counted as a day of pretrial confinement. Notwithstanding the foregoing, authorities responsible for sentence computation will count the day of sentencing as a day of pretrial confinement, when the accused was in pretrial confinement on the day that a sentence including confinement was announced and, for any reason (e.g., immediate deferment), that day does not count towards service of the sentence to confinement.]

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STAFF JUDGE ADVOCATE/LEGAL OFFICER RECOMMENDATION

From: Legal Officer/Staff Judge Advocate
To: Commanding Officer, _____

Subj: RECOMMENDATION IN THE SPECIAL/GENERAL COURT MARTIAL CASE OF
_____

Ref: (a) R.C.M. 1106, MCM, [insert current edition]
(b) JAGMAN, 0151c

Encl: (1) As appropriate

1. Pursuant to references (a) and (b) the following information is provided:

a. Offenses, pleas, and findings:

Charges and specifications Pleas Findings

b. Sentence adjudged:

c. Clemency recommendation by court or military judge:

d. Summary of accused's service record:

(1) Length of service:

(2) Character of service (average pros and cons, average of evaluation traits):

(3) Awards and decorations:

(4) Records of prior nonjudicial punishment:

(5) Previous convictions:

(6) Other matters of significance:

e. Nature and duration of pretrial restraint:

f. Judicially-ordered credit to be applied to confinement, if any:

g. Terms and conditions of pretrial agreement (if any) which the convening authority is obligated to honor or reasons why the convening authority is not obligated to take specific action under the agreement:

h. Optional information - any recommendations for clemency (from division officer, company commander, immediate supervisor, etc.) or any other matters which are deemed appropriate. (Note: If any matters adverse to the accused are presented to the CA from outside the record of trial, with knowledge of which the accused is not chargeable, the accused shall be notified and be given an opportunity to rebut.)

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2. For staff judge advocate only: State whether corrective action on the findings or sentence is appropriate based upon allegations of error raised by the accused after sentence is adjudged, or when otherwise deemed appropriate by the staff judge advocate. See R.C.M. 1106(d)(4), MCM.

3. A specific recommendation as to the action to be taken by the convening authority on the sentence.

Signature

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REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE

(See JAGMAN 0165)

U.S.	)	[SPCM] [GCM] NCM _____
	)	REQUEST FOR IMMEDIATE EXECUTION
v.	)	OF [BAD CONDUCT] [DISHONORABLE]
	)	DISCHARGE ADJUDGED ON _____
[Name, SSN, grade or	)	BY [SPECIAL] [GENERAL] COURT-MARTIAL
rate and armed service]	)	CONVENED BY _____
	)	[AT] [ON BOARD] _____

To: [Officer exercising general court-martial jurisdiction]

1. I, the undersigned, the accused in the above-captioned case, hereby request the immediate execution of the above-described [dishonorable] [bad conduct] discharge and my release from the Naval service.

2. Naval Clemency and Parole Board review pursuant to SECNAV Instruction 5815.3 (series) [has been completed] [is not required].

3. I received a copy of the decision of the U.S. Navy-Marine Corps Court of Military Review in my case on _____.

4. I have had fully explained to me, and I understand my right, under Article 67(c), Uniform Code of Military Justice, to petition the U.S. Court of Military Appeals for grant of review within 60 days from the date I received my copy of the decision of the U.S. Navy-Marine Corps Court of Military Review.

5. I do not have an appeal pending before the U.S. Court of Military Appeals at this time, nor do I now intend to appeal; however, I understand that, if this request is granted, it will not affect my right to appeal if I later change my mind and decide to appeal.

6. I have discussed this matter with _____ [Name, grade], counsel of my own choice.

_____

[Signature of Accused]

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CERTIFICATE

I, the undersigned officer of the grade, and branch of service below stated, certify that the above-named accused personally appeared before me this _____ day of _____, 20___, at _____[place]; I explained to him his right, under Article 67(c), Uniform Code of Military Justice, to petition the U.S. Court of Military Appeals for grant of review; I read aloud to him the foregoing request; and he thereafter signed the same in my presence and acknowledged that he did so as his free and voluntary act.

[Signature]
Name, grade

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SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT
(See JAGMAN 0170)

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT

FULL NAME (ACCUSED/SUSPECT)	SSN	RATE/RANK	SERVICE(BRANCH)

ACTIVITY/UNIT	DATE OF BIRTH

NAME (INTERVIEWER)	RATE/RANK	SERVICE(BRANCH)

ORGANIZATION	BILLET

LOCATION OF INTERVIEW	TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s):

_____

_____

_____ [ ]

(2) I have the right to remain silent; ---------- [ ]

(3) Any statement I do make may be used as evidence against me in trial by court-martial; ---------- [ ]

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; ---------- [ ]

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview; and ------ [ ]

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(6) If I decide to answer questions now without a lawyer present, I will have the right to stop this interview at any time. ---------- [ ]

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, ---------- [ ]

(1) I expressly desire to waive my right to remain silent. ---- [ ]

(2) I expressly desire to make a statement. ---------- [ ]

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning. ---------- [ ]

(4) I expressly do not desire to have such a lawyer present with me during this interview. ---------- [ ]

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. [ ]

(6) I further understand that, even though I initially waive my rights to counsel and to remain silent, I may, during the interview, assert my right to counsel or to remain silent. ---------- [ ]

NOTE: IF THE SUSPECT INDICATES HE IS WILLING TO MAKE A STATEMENT, HE SHOULD FIRST BE ASKED WHETHER HE HAS MADE A STATEMENT IN RESPONSE TO QUESTIONS ABOUT THE SUSPECTED OFFENSE TO ANYONE HE BELIEVED WAS ACTING IN A LAW ENFORCEMENT CAPACITY PRIOR TO THE PRESENT INTERVIEW. IF THE SUSPECT INDICATES HE HAS PREVIOUSLY MADE SUCH A STATEMENT, ADVISE THE SUSPECT AS FOLLOWS:

PREVIOUS STATEMENTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) My previous statement may not be admissible at courts-martial and may not be usable against me. (It may not be possible to determine whether a previous statement made by the suspect will be admissible at some future court-martial; this suggests it may be wise to treat it as inadmissible and provide the cleansing warning).

(2) Regardless of the fact that I have talked about this offense before, I still have the right to remain silent now.

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SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

The statement which appears on this page (and the following _____page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

_____
SIGNATURE (ACCUSED/SUSPECT)

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RECORD OF AUTHORIZATION FOR SEARCH
(See JAGMAN 0170)

RECORD OF AUTHORIZATION FOR SEARCH

1. At _____ [time] on _____ [date], I was approached by _____ [name] in his capacity as _____ [duty] who having been first duly sworn, advised me that he suspected _____ [name] of _____ [offense] and requested permission to search his _____ [object or place] for _____ _____ [items].

2. The reasons given to me for suspecting the above named person were:

_____
_____
_____
_____
_____
_____
_____

3. After carefully weighing the foregoing information, I was of the belief that the crime of _____ [had been] [was being] [was about to be] committed, that _____ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized _____ to search the place named for the property specified, and if the property be found there, to seize it.

_____ _____
[Name/Grade/Title] Date and Time

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

2. Other than his own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information.

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An example of an oath is as follows: "Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?" This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) fruits of a crime (the results of a crime such as stolen objects); (2) instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) contraband (items, the mere possession of which is against the law - marijuana, etc.); or (4) evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

a. An offense probably is about to be, or has been committed;

b. Specific fruits or instrumentalities of the crime, contraband, or evidence of the crime exist; and

c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

6. In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances, or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists. If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

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CONSENT TO SEARCH
(See JAGMAN 0170)

CONSENT TO SEARCH

I, _____, have been advised that inquiry is being made in connection with _____ _____. I have been advised of my right not to consent to a search of [my person] [the premises mentioned below]. I hereby authorize _____ and _____, who [has] [have] been identified to me as _____ [position(s)] to conduct a complete search of my [person] [residence] [automobile] [wall locker] [_____] [_____] located at _____ _____.

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire. This search may be conducted on _____ [date].

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

_____
[Signature]

WITNESSES

Name	Signature	Date
Name	Signature	Date

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REPORT OF SUMMARY COURT-MARTIAL

Instruction: The following information shall be attached to the summary court-martial record of trial. Use of DD Form 2329 is not required, but is strongly recommended because it fulfills the requirements of R.C.M. 1305, MCM.

1. Location, date(s) conducted, persons present (with title and role, e.g., witness, accused, summary court-martial, etc.), and findings.

2. List of documents attached to report of summary court-martial, including:

a. Convening order

b. Charge sheet

c. Documents and physical evidence, where practicable

d. Acknowledgement of rights advisory, including waiver of right to refuse summary court-martial.

3. Summary of evidence on the merits (required for each charge and specification of which the accused is found guilty contrary to his/her plea):

a. Pleas

b. Offense of which convicted

c. Evidence supporting guilt

(1) Witness testimony

(2) Documents presented (notation as to whether admitted or denied, description if not attached)

(3) Other physical evidence (notation as to whether admitted or denied, description if not attached)

(4) Stipulations

(5) Other

d. Evidence supporting defense:

(1) Testimony of accused

(2) Witness testimony

(3) Documents presented (notation as to whether admitted or denied, description if not attached)

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(4) Other physical evidence (notation as to whether admitted or denied, description if not attached)

(5) Stipulations

(6) Any other matters submitted by the defense

4. Matters submitted in aggravation, and extenuation and mitigation:

a. Matters in aggravation

(1) Documents presented (notation as to whether admitted or denied, description if not attached)

(2) Witness(es) testimony

(3) Any other matters

b. Matters in extenuation and mitigation:

(1) Statement of accused

(2) Documents presented (notation as to whether admitted or denied, description if not attached)

(3) Witness(es) testimony

(4) Any other matter submitted by the defense

5. Sentence adjudged:

6. Clemency or suspension recommendation:

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OFFICER NJP REPORT
(See JAGMAN 0119)

[LETTERHEAD]

1621
17
[Date]

From: Commanding General, 1st Marine Aircraft Wing
To: Commandant of the Marine Corps (JAM)
Via: (1) Commanding General, III Marine Expeditionary Force
(2) Commanding General, Fleet Marine Forces Pacific

Subj: REPORT OF NONJUDICIAL PUNISHMENT ICO FIRST LIEUTENANT JOHN J. JONES, UCMC, 123 45 6789/1369

Ref: (a) MCO P5800.8B (LEGADMINMAN)
(b) FMFPAC2O 5810.1[insert appropriate series letter]
(c) UCMJ, Article 15
(d) Part V, MCM
(e) JAGMAN, Chapter 1, Part B
(f) Article 1122, U.S. Navy Regulation (1990)

Encl: (1) Record of Hearing under Article 15, UCMJ
(2) Punitive Letter of Reprimand
(3) 1stLt Jones' ltr 1621 17 of [date]
(4) 1stLt Jones' statement regarding adverse matter

1. This report is forwarded for inclusion in 1stLt Jones' official records per paragraph 4003 of reference (a) via intermediate commanders, as directed by paragraph 3d(2) of reference (b).

2. On 4 December 1990, in accordance with references (c), (d), and (e), nonjudicial punishment was imposed on 1stLt Jones for conduct unbecoming an officer. As a result, he was awarded a punitive letter of reprimand and a forfeiture of $400.00 pay per month for two months.

3. Details of the hearing and the circumstances of the offense(s) are set forth in enclosure (1). A copy of the punitive letter of reprimand is attached as enclosure (2).

4. As reflected in enclosure (3), 1stLt Jones did not appeal the punishment. Accordingly, the nonjudicial punishment is now final and will be reflected in the fitness report that includes the date it was imposed, 4 December 1990.

5. I recommend that 1stLt Jones be retained on active duty until the expiration of his obligated active service.

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6. By copy hereof, 1stLT Jones is notified of his right, per reference (f), to submit his comments, within 15 days of receipt, concerning this report of nonjudicial punishment and the letter of reprimand which will be included as adverse matter in his official records. His comments, if any, will be attached as enclosure (4).

[Signature]

Copy to:
Commanding Officer, MAG-32
Commanding Officer, MALS-32
1stLt Jones

SAMPLE FIRST ENDORSEMENT

FIRST ENDORSEMENT on CG, 1stMAW ltr 1621 17 of [DATE]

From: Commanding Officer, Marine Wing Aircraft Squadron 1
To: First Lieutenant John J. Jones, USMC, 123 45 6789/1369

Subj: PUNITIVE LETTER OF REPRIMAND

1. Delivered.

[Signature]
By direction

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ACKNOWLEDGEMENT OF ADVANCED EDUCATION ASSISTANCE REIMBURSEMENT

I understand that, in accordance with 10 U.S.C. § 2005, I may be required to reimburse the U.S. for the cost of advanced education assistance provided to me by the Government, if I voluntarily or as a result of misconduct fail to complete the required period of active duty service specified in the written agreement I entered into with the U.S. prior to accepting advanced education assistance.

_____

Signature

_____

Date

_____

Witness

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CHAPTER II

ADMINISTRATIVE INVESTIGATIONS

PART A -- OVERVIEW

0201 SCOPE

a. General. This chapter sets forth principles governing the convening, conduct, review, and storage of administrative investigations conducted in or by the Department of the Navy (DON) under the authority of this Manual. The term "commander" generally refers to both commanding officers and officers in charge, but in the case of a major incident, see section 0203. The commander who directs an investigation, other than a preliminary inquiry, is referred to as the convening authority (CA).

b. Relation to UCMJ investigations. In some circumstances, other regulations may require an investigation when this Manual does not. For example, if the only basis for an investigation is disciplinary action, a preliminary inquiry under Rule for Courts-Martial (R.C.M.) 303, Manual for Courts-Martial (MCM), or a pretrial investigation under R.C.M. 405, MCM, and Article 32, UCMJ, should be conducted without a separate investigation under this Manual.

c. Relation to other investigations. In addition to the investigations governed by this Manual, investigations may be required by other regulations. These investigations have different purposes and both may be appropriate. For example, investigations are required by other regulations, such as:

(1) situation reports prescribed by Articles 0831 and 0851, U.S. Navy Regulations (1990), OPNAVINST 3100.6 (series), or other situation reports prescribed by bureau manuals or departmental regulations;

(2) investigations conducted by an inspector general under SECNAVINST 5430.57 (series);

(3) investigations of aircraft accidents under OPNAVINST 3750.6 (series);

(4) reports concerning security violations prescribed by SECNAV M-5510.36;

(5) safety and mishap investigation reports required by Chapter A6 of OPNAVINST 5102.1 (series) or by MCO P5102.1 (series);

(6) investigations conducted by the Naval Criminal Investigative Service (NCIS) under SECNAVINST 5430.107 (series);

(7) investigations of allegations against senior DON officials conducted pursuant to SECNAVINST 5800.12 (series).

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d. Coordination with law enforcement investigations. Before conducting a preliminary inquiry or convening an investigation under this chapter, a commander shall ascertain, through liaison with the Naval Criminal Investigation Service (NCIS), whether a law enforcement investigation (military, federal, or civil) is pending in the same matter. If a law enforcement investigation is pending, the commander should determine whether the law enforcement investigation will serve to appropriately document the matter without further investigation under this chapter, see section 0216h(2) and Part G. If the commander determines that a preliminary inquiry or investigation needs to be conducted in addition to the law enforcement investigation, he shall:

(1) Coordinate any preliminary inquiry or investigation with the cognizant law enforcement agency through NCIS, unless NCIS declines, in which case direct liaison may be made. It is recommended that the commander include written direction that the officials being tasked to conduct the preliminary inquiry or investigation communicate and coordinate their efforts with the cognizant law enforcement agency.

(2) Refer to the Region Commander, his designee, or, in the case of the Marine Corps, to the general court-martial convening authority (GCMCA), via the chain-of-command, any conflicts between the law enforcement agency and the commander that cannot be resolved locally, and suspend action on the contested matter pending resolution. For example, if NCIS, on behalf of itself or another law enforcement agency, objects to the convening of an investigation under this chapter, the commander will not convene the investigation until the matter is resolved by the designated higher authority. Similarly, if an investigation under this chapter is in progress but NCIS objects to the interview of a specific witness, the witness will not be interviewed until the matter is resolved by the higher designated authority; although, in this example, other aspects of the investigation could continue to be worked.

e. Access to reports of investigation. Release of administrative investigation reports outside DON is governed by SECNAVINST 5720.42 (series), on FOIA, and SECNAVINST 5211.5 (series), on the Privacy Act. See section 0219 and Chapter V for additional information.

0202 ASSISTANCE

Guidance for all types of investigations, except litigation reports, may be obtained from Office of the Judge Advocate General (OJAG), Administrative Law Division (Code 13) at DSN 664-8228 or 703-604-8228. Guidance on interpretation and application of policy for litigation reports may be obtained from OJAG, Claims and Tort Litigation Division (Code 15) at DSN 325-4600 or 202-685-4600, or, in the case of Admiralty investigations, from OJAG, Admiralty and Maritime Law Division (Code 11) at DSN 325-5040 or 202-685-5040.

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PART B -- PRELIMINARY CONSIDERATIONS

0203 PRELIMINARY INQUIRY

a. Purpose. A preliminary inquiry serves as an analytical tool to determine whether additional investigation is warranted and, if so, how it is to be conducted. A preliminary inquiry is not intended to develop extensive facts or to serve as a medium for analyzing facts. Commanders should consult with a judge advocate when determining whether additional investigation is necessary.

b. Responsibility

(1) Generally, a commander is responsible for initiating preliminary inquiries into incidents occurring within, or involving personnel of, the command. The reporting command of a member who is injured or dies during PCS transfer shall ensure that appropriate inquiries are conducted.

(2) In the event of a major incident, however, the GCMCA over the command involved, if a flag or general officer, or the first flag or general officer in the chain-of-command, or any superior flag or general officer in the chain-of-command, will immediately take cognizance over the case as the "commander."

c. Method. A commander may conduct a preliminary inquiry personally or through designees. While the preliminary inquiry may be accomplished in any manner considered sufficient by the commander, normally it will be directed in writing by an appointing order and the outcome documented in writing. See appendix A-2-h for an example. Evidence gathered during a preliminary inquiry shall be preserved and submitted to the investigating officer in the event the commander later initiates an investigation.

d. Preliminary inquiries into incidents involving potential claims or litigation. An incident may occur in which there is a potential for claims or litigation for or against the DON or U.S. Absent preliminary inquiry, the commander will not know whether the matter is more appropriately the subject of a command investigation, litigation report investigation, or court or board of inquiry. In such situations, the commander may choose to conduct the preliminary inquiry under the direction and supervision of a judge advocate in anticipation of litigation. In such instances, the commander should use an appointing order for the preliminary inquiry and include language as described in section 0209, paragraphs (d) and (e).

e. Time limitations. Generally, the preliminary inquiry should be completed within three working days of the commander learning of the incident in question. The commander may grant extensions as necessary on a case-by-case basis and with the limited nature of the preliminary inquiry in mind. A preliminary inquiry into a major incident will usually take longer, see subsection (g) below.

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f. Major incidents

(1) Investigation of major incidents (see appendix A-2-a for definition) is sometimes complicated by premature appointment of a court of inquiry. Failure to first ascertain the sequence of incident events and identify essential witnesses can unnecessarily prolong and complicate subsequent proceedings.

(2) A commander, see subsection b(2) above, will normally find it valuable to appoint an officer immediately to conduct a preliminary inquiry. Such officer should begin to locate and preserve evidence and identify and interview witnesses. A commander may direct such officer to submit oral reports, which would permit the commander to make a timely decision as to how to proceed with the investigation. It would also be an option for the commander to detail such an officer as an assistant to the counsel for a court of inquiry if one is convened.

(3) If a commander concludes that an incident initially considered major does not fit within the definition of that term, see Appendix A-2-a, or concludes that a court of inquiry is not warranted, the commander shall, prior to convening another type of investigation, report such conclusion and the reasons therefor to the next superior officer in the chain-of-command.

g. Action. A preliminary inquiry is concluded when the commander who initiated the inquiry has sufficient information to exercise one of the options listed in section 0204, including the option of taking no further action. Ordinarily, when a commander determines which of the options listed in section 0204 will be exercised, a report of that decision will be made to his immediate superior in command. Superior commanders may modify this reporting requirement by limiting the categories of incidents that should or should not be reported. Such report may be made in the context of existing situational reporting systems. No stand-alone report is required, see, e.g., MILPERSMAN 1770-030 for the requirement to submit Personnel Casualty Reports.

h. Review. A superior in the chain-of-command may direct a subordinate to exercise a specific option under section 0204, or to reconsider a decision made under that section.

0204 COMMAND OPTIONS

a. General. After considering the results of a preliminary inquiry, a commander should consult a cognizant judge advocate (see Appendix A-2-a for definition) to obtain legal advice on how to proceed and shall exercise one of the options below. Subject to the factors set forth in below, determining which option to exercise is, in the first instance, a matter of command discretion. Superiors in the chain-of-command may, however, direct a commander to reconsider or to take a different course.

b. Options

(1) take no further action, see section 0206;

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(2) make appropriate medical or dental record Line of Duty (LOD) determination; see section 0229;

(3) conduct a command investigation, see section 0208;

(4) convene a litigation-report investigation to be conducted under the direction and supervision of a judge advocate; see section 0209; or

(5) in cases involving a major incident, convene a court or board of inquiry. If not authorized to do so, then the commander may request, via the chain-of-command, an officer with such authority to convene the court or board. See section 0210.

c. Factors to consider

(1) Purpose of the investigation. Generally, the primary manner in which the investigation will be used will determine which option should be exercised. If, for example, an investigation will be used primarily to defend against a civil lawsuit, then a litigation-report investigation, see section 0209, or an Admiralty Letter Report, see Chapter XII of this Manual, should be conducted to ensure that the DON's legal interests are protected. However, the fact that a potential claim exists is not the only consideration in determining the nature of the investigation, as there may be sound policy reasons, such as openness and transparency of process or results, that warrant the convening of a command investigation or court or board of inquiry. If an incident is of little interest outside the immediate command, then the commander may wish merely to document the results of the preliminary inquiry and take no further action.

(2) Powers of the investigation. In choosing an option, a commander should consider the powers that an investigative body will require to do its job.

(a) Courts and boards of inquiry provide hearings, which are especially effective at resolving significant disputed issues of fact.

(b) Individuals whose conduct or performance of official duty is being questioned can best protect their interests by being given the rights of a party at a court or board of inquiry.

(c) If subpoena power will be required, a court of inquiry is the only option.

(3) Resource and time concerns

(a) Generally, the more formal the investigation, the more resources and time required. Nonetheless, conducting a command investigation when a court or board of inquiry is indicated is likely to be a false economy, since the less formal format will often fail to address the issues adequately.

(b) Under circumstances where a court-martial might arise from the incident, a court of inquiry may prove to be efficient because it may be a valid substitute for the Article 32, UCMJ, investigation.

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0205 SEEKING COUNSEL

a. Although the natural instinct of a commander is to seek out and document facts quickly, doing so without judge advocate involvement may not only be counterproductive but may actually work against the interests of the commander, the command, and DON.

b. Whenever a question exists about how a particular incident or event should be investigated, a commander should discuss the matter with a cognizant judge advocate.

0206 NO FURTHER ACTION

a. Not every incident or event warrants an investigation. A commander who concludes that further investigation would serve no useful purpose may decide not to conduct one, unless superior authority directs otherwise or unless an investigation is required by the following sections. This option is appropriate if the preliminary inquiry reveals that the event is likely to be of little interest to anyone outside the immediate command or that the event will be investigated adequately under some other procedure, such as a mishap investigation or NCIS investigation. See e.g., references cited in section 0202. In such cases, a commander should, but is not required to, document the results of the preliminary inquiry. See Appendix A-2-h for a sample format.

b. For example, if the preliminary inquiry into the circumstances surrounding the manner in which a military member sustained a permanently disabling injury reveals no systemic contributing causes, no evidence of misconduct, and adequate medical record documentation, then the command need do nothing further. See Part E regarding line of duty/misconduct determinations.

PART C -- THREE TYPES OF ADMINISTRATIVE INVESTIGATIONS

0207 COMMONALITIES. Principles applicable to all types of administrative investigations conducted under the authority of this Manual are discussed in Part D.

0208 TYPE ONE: COMMAND INVESTIGATIONS

a. Purpose. A command investigation functions to gather, analyze, and record relevant information about an incident or event of primary interest to command authorities. Most investigations will be of this nature. Command investigations may, for example, be used to inquire into:

(1) significant property losses (minor property losses in most cases will be adequately documented through other means), other than damage to or destruction of public quarters since such incidents are likely to result in claims against or for the Government and, consequently, require a litigation-report investigation;

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(2) incidents in which a member of the naval service, as a result of possible misconduct, incurs a disease or injury that may result in a permanent disability or a physical inability to perform duty for a period exceeding 24 hours (distinguished from a period of hospitalization for evaluation or observation); see Part E;

(3) deaths of military personnel, or of civilian personnel occurring aboard an activity under military control, apparently caused by suicide or under other unusual circumstances; see part F for special considerations in death cases; and

(4) aircraft incidents, groundings, floodings, fires, and collisions not determined to be major incidents; see part G for guidance on investigating specific types of incidents.

b. Use limitations. This type of investigation should not be used to inquire into:

(1) incidents that have resulted or are likely to result in claims or litigation against or for DON or the U.S., if the primary purpose of the investigation is to prepare to defend the legal interests of DON and the U.S.; see section 0209; and

(2) incidents which have the potential for causing significant damage to the environment, for which a litigation-report investigation should be conducted. See OPNAVINST 5090.1 (series), Environmental and Natural Resources Program Manual, for spill reporting requirements.

c. Responsibilities

(1) Generally, a commander is responsible for initiating command investigations into incidents occurring within, or involving personnel of, the command.

(2) If a commander believes that the investigation of an incident is impractical or inappropriate for the command to investigate, another command may be requested to conduct the investigation. When circumstances such as pending deployments, geographical separation, or military exigencies prevent the command from conducting or completing a thorough investigation, requests for assistance may be directed to superiors in the chain-of-command. Such requests should contain all available information, such as time, place, and nature of the incident; full names, grades, and leave status of members; names and addresses of all known witnesses; and copies of all relevant statements, written evidence, or reports.

(3) Whenever more than one command is involved in an incident requiring investigation, a single investigation should be conducted. Such an investigation may be convened by the commander of any of the activities concerned, and all the activities shall cooperate in the investigation. If difficulty arises in determining the appropriate CA, then the matter shall be referred to the Region Commander or common superior. If the conduct or performance of duty of one of the officers in command may be subject to

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inquiry, then the Region Commander or common superior shall convene the investigation.

(4) Whenever an incident or event involves only members of the other Military Departments, the nearest command of the member's parent service shall be notified and requested to contact the cognizant authority. If requested to do so by the other Military Department, then an investigation shall be convened and the report forwarded per the direction of the parent service. No further action need be taken within DON.

(5) Incidents involving Marine Corps personnel

(a) When an investigation of a training or operational incident causing serious injury or death (other than a major incident or aviation accident) is required, the senior commander in the chain-of-command of the organization involved will consider convening the investigation and appointing the investigating officer at that level. No member of the organization suffering the incident, nor any member of the staff of a range or other training facility involved in the incident, shall be appointed to conduct the investigation without the concurrence of the next senior commander. For special routing instructions for training and operations incidents causing serious injury or death, see section 0240 and Part F.

(b) If Marine Corps personnel are involved in a non-major incident requiring an investigation while in an area geographically removed from the parent command, the commanding officer shall request investigative assistance from a GCMCA Marine commander in the immediate area where the incident occurred or, in the absence of such an officer, from the Commanding General, Marine Forces Reserve.

d. Convening order. The convening order:

(1) should direct the investigating officer to seek the assistance of a judge advocate;

(2) may direct the investigating officer to provide opinions or recommendations in addition to finding facts;

(3) shall specify when the investigative report is due;

(4) may not designate parties;

(5) shall direct, in applicable cases, per section 0202, investigators to coordinate the JAGMAN investigation with NCIS/Security personnel who may be conducting criminal investigations, requiring the report of any conflict to the CA for resolution; and

(6) should identify potential witnesses and sources of information, and otherwise provide such direction as the CA determines necessary or proper, including specifying the format in which the report will be submitted. Normally, a letter report supported by enclosures will be specified. See Appendix A-2-c for a sample convening order and report.

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e. Method

(1) A command investigation --

(a) is convened in writing;

(b) is conducted by one or more persons in the DON;

(c) collects evidence by personal interviews, telephone inquiries, or written correspondence;

(d) is documented in writing in the manner prescribed by the CA in the convening order;

(e) does not involve hearings; and

(f) may contain sworn statements signed by witnesses.

(2) A command investigation may assign certain issues, witnesses, or specific matters to individual members for investigation if more than one investigating officer is appointed, and hold later meetings to review the information collected for completeness. Additionally, the investigation may proceed by calling witnesses to present testimony or by obtaining information through personal interview, correspondence, telephone inquiry, or other means.

f. Time limitations. The CA will prescribe when the report is due, normally 30 days from the date of the convening order, except in death cases, however, where the investigation is to be completed 20 days from the date of the death, or its discovery. The CA may grant extensions as necessary. Requests and authorizations for extensions need not be in writing but must be memorialized in the preliminary statement and/or endorsement, as applicable.

g. Action. A CA may determine that the investigation is of no interest to anyone outside the command, and, unless otherwise directed by superior authority, may choose to treat it as an internal report; see section 0208 below for retention guidance. If the CA intends to forward the report of investigation:

(1) Upon receiving a command investigation report from the investigating officer(s), the CA shall review or have the report reviewed, and either endorse the report in writing or return it to the investigating officer for further investigation. In the endorsement, the CA may approve, disapprove, modify, or add to the findings of fact, opinions, and recommendations. The CA may also concur in or disagree with recommendations, which the CA cannot implement at the CA's level. If the CA did not require opinions and recommendations in the convening order, then the CA shall state opinions and make recommendations as appropriate. The CA shall also indicate what corrective action, if any, is warranted and a timeline for implementation. The CA shall also state in the endorsement where any original evidence is preserved and provide the name and telephone number of the responsible official; see section 0214 for further information on the safekeeping of evidence.

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(2) The CA shall retain a copy of the report and forward the original, through the chain-of-command, including the Region Commander when appropriate, to the GCMCA over the CA. The subject matter and facts found will dictate the routing of the report for further review. The GCMCA may, by regulation, specify forwarding requirements for investigations into certain categories or types of incidents for subordinate commands. The CA shall also provide copies of the report to other commands that may have an interest, such as the Naval Safety Center. The CA shall maintain copies of all command investigations for a minimum of 2 years.

(a) Copies of investigations in which the adequacy of medical care is reasonably in issue and that involve significant potential claims, permanent disability, or death shall be provided to the Naval Inspector General and Chief, Bureau of Medicine and Surgery. Most incidents of this nature involving potential claims should be the subject of a litigation-report investigation.

(b) If an investigation involves a claim or redress of injuries to property under Article 139, UCMJ, see Chapter IV of this Manual. Most incidents of this nature should be the subject of a litigation-report investigation.

(c) See section 0218 for additional information on routing copies of the investigative report.

(d) See section 0240 for special routing requirements in death cases.

(3) The CA's action on the report should be completed within 30 days of receiving the report, except in death cases where section 0233 requires CA review in 20 days.

h. Review

(1) A GCMCA superior to the CA must review any command investigation which has been forwarded. Thus, if the first reviewer is not a GCMCA, the investigation will require additional review. Superior commanders may, by regulation or on an *ad hoc* basis, provide direction concerning review and forwarding of investigations consistent with this chapter. The subject matter and facts found will dictate the routing of the report for additional review. As a general rule, intermediate reviewing authorities should complete their review and forward the investigation within 30 days. In death cases, endorsers shall complete this review within 20 days; see section 0233. Command investigations are not forwarded to Office of the Judge Advocate General (OJAG). All investigations are considered final when the last reviewing authority determines that further endorsement is not necessary.

(2) Investigations that involve loss, compromise, or possible compromise of classified information shall be routed per SECNAV M-5510.36.

(3) See section 0240 for special routing requirements in death cases.

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(4) Copies of the investigation should be made available to all superior commanders who have a direct official interest in the recorded facts. Region Commanders or designated subordinate commanders have a direct official interest in incidents that affect their command responsibility or occur in their geographic area. Generally, copies need not be provided to the Chief of Naval Operations or to the Commandant of the Marine Corps, but copies of investigations into the following types of incidents shall be forwarded to the codes indicated:

(a) incidents that may result in extensive media exposure (N09C or CMC(JA));

(b) training incidents causing death or serious injury (N7 or CMC(JA));

(c) operational incidents causing death or serious injury (N3/5 or CMC(JA));

(d) incidents involving significant fraud, waste, abuse, or significant shortages of public property or funds (N09G or CMC(CL));

(e) incidents involving lost, missing, damaged, or destroyed property of significant value (N09G or CMC (CL));

(f) incidents involving officer misconduct (N1 or CMC(JAM));

(g) incidents that are required to be reported to Headquarters by other directives or regulations, as appropriate;

(h) incidents or investigations that may require action by CNO or CMC, as appropriate; and

(i) cases involving significant postal losses or offenses (N4 or CMC (MHP-50)).

(5) Investigations shall be retained by the CA, GCMCA, or by the last commander to whom they are routed for a period of 2 years from the time that they are received. After 2 years, command investigations shall be sent to Office of the Judge Advocate General, Tort Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989 for storage. If the CA or GCMCA receives a request for an investigative report, that command shall submit a request for the investigation to the Tort Claims Unit (TCU). The TCU will forward the investigation to the requesting command. Once the command has responded to the inquiry, the command shall return the investigation to the TCU for storage. See section 0214 on storing and protecting original evidence.

0209 TYPE TWO: LITIGATION-REPORT INVESTIGATIONS

a. Purpose. Investigations serve many purposes, but when an incident or event is likely to result in claims or civil litigation against or for DON or the U.S., often the primary purpose of the resulting investigation is to prepare to defend the legal interests of the DON and the U.S. See Chapter

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VIII of this Manual for more information on claims and/or Chapter XII, section 1205, concerning admiralty incident investigations when litigation is anticipated. A command should contact a judge advocate or OJAG (Code 15) at the earliest opportunity prior to commencing a litigation-report investigation to determine if this is the appropriate type of investigation to be conducted under the circumstances. Investigations into such incidents must be conducted under the direction and supervision of a judge advocate, and protected from disclosure to anyone who does not have an official need to know. When investigations are conducted in anticipation of litigation, but are not conducted under the direction and supervision of a judge advocate or are handled carelessly, they cannot be protected from disclosure to parties whose litigation interests may be adverse to the interests of the U.S. In such an event, the materials gathered during the investigation become evidence even if subsequently proven incorrect or inaccurate. It is imperative, therefore, that litigation-report investigations be conducted in accordance with the rules that follow.

b. Comparison with command investigations

(1) Unlike a command investigation, a litigation-report investigation must be:

(a) convened only after consultation with a cognizant judge advocate;

(b) conducted under the direction and supervision of that judge advocate;

(c) conducted primarily in anticipation of claims or litigation; and

(d) forwarded to OJAG (Code 15), TCU. See section 0209g(2).

(2) Like a command investigation, a litigation-report investigation:

(a) may not be used to investigate a major incident;

(b) may not have designated parties; and

(c) does not involve hearings.

c. Responsibilities

(1) After consulting a judge advocate, a commander is responsible for initiating litigation-report investigations into incidents involving the command or its personnel. The cognizant judge advocate, however, is responsible for supervising the conduct of the investigation. This does not mean that the judge advocate is the investigating officer, but it does mean that the investigating officer works under the direction and supervision of the judge advocate while conducting the investigation.

(2) The cognizant judge advocate may request the assistance of the CA or ask the CA to request help from superiors in the CA's chain-of-command when circumstances such as pending deployments, geographic separation, or military

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exigencies prevent a thorough investigation from being conducted or completed. Such requests should contain all relevant information and indicate that the investigation is being conducted in contemplation of litigation, see section 0209d(2), and should be processed accordingly.

(3) Whenever more than one command is involved in an incident requiring a litigation-report investigation, a single investigation under the supervision of a single judge advocate should be conducted. All concerned activities shall cooperate in the investigation. If difficulty arises in determining the appropriate CA, then the matter shall be referred for resolution to the common superior having a judge advocate on staff.

(4) When service members or their family members are injured by third parties and admitted to a naval medical treatment facility, the facility commander shall report such incidents. Such incidents shall be reported to the member's command, to the Region Commander or to the designated subordinate commander, and to the OJAG Medical Care Recovery Unit in whose geographic area of responsibility the incident occurred, so that any necessary investigation may be made; see Chapter VIII of this Manual.

d. Convening order

(1) The convening order shall identify the judge advocate under whose direction and supervision the investigation is to be conducted. The convening order shall direct the investigating officer to report to that judge advocate before beginning to collect evidence, and to comply with the judge advocate's direction and supervision thereafter. To protect confidentiality, opinions or recommendations will only be included if directed by the supervising judge advocate. The order shall specify when the investigative report is due.

(2) The order shall state specifically: "This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

(3) The order shall caution the investigating officer that the investigation's conduct and results may be discussed only with personnel having an official need to know. The order may identify potential witnesses and other sources of information. Parties may not be designated.

(4) A sample convening order is in Appendix A-2-d.

e. Method

(1) A litigation-report investigation shall --

(a) be convened in writing;

(b) be conducted by one or more persons in DON under the direction and supervision of the cognizant judge advocate;

(c) collect evidence by personal interviews, telephone inquiries, written correspondence, or other means;

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(d) be documented in writing in the manner prescribed by the cognizant judge advocate; see Appendix A-2-d for a sample; and

(e) NOT contain statements signed by witnesses. Signed statements are subject to discovery and release to opposing parties in civil litigation even if provided to an attorney.

(2) During the course of a litigation-report investigation, the investigating officer shall be guided by the cognizant judge advocate and shall consult frequently as the investigation progresses. When it is necessary to obtain evidence such as expert analyses, outside consultant reports, and so forth, the judge advocate should sign the necessary requests. The investigating officer shall present the preliminary findings to the judge advocate for review. The judge advocate may direct the investigating officer to provide opinions and recommendations, or the judge advocate may write the opinions and recommendations.

(3) When the report is compiled, it shall be marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and be signed by both the investigating officer and the cognizant judge advocate.

f. Time limitations. The CA will prescribe when the report is due, normally 30 days from the date of the convening order. The CA may grant extensions at the request of the cognizant judge advocate. Requests and authorizations need not be in writing but should be memorialized in the preliminary statement.

g. Action

(1) Upon receiving a litigation-report investigation, the CA shall review the report or cause it to be reviewed, and either endorse the report in writing or return it to the cognizant judge advocate for further inquiry. In the CA's endorsement, comment may be provided on those aspects of the report that bear on the administration or management of the command. The CA should, for example, indicate what corrective action, if any, is warranted and a timeline for implementation. The CA shall not normally approve or disapprove the findings of fact. If the CA is dissatisfied with the findings, the CA may return the report to the cognizant judge advocate for additional information. The CA shall state in the endorsement where the original evidence is preserved and provide the name and telephone number of the responsible official; see section 0214 for further information on the safekeeping of evidence. The CA's endorsement shall be marked: "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT."

(2) The CA shall retain a copy of the report and forward the original plus one copy to the Office of the Judge Advocate General, Tort Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989, via the staff judge advocate of the GCMCA in the chain-of-command. The copy must be kept in a file marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and be safeguarded against improper disclosure. The CA will provide superiors in the chain-of-command, and other commands that have a direct official need to know the results of the investigation, with a copy of the report but shall not otherwise disseminate the report without consulting a judge advocate.

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(a) Copies of investigations of incidents, other than "Health Care Incidents" under section 0251, in which the adequacy of medical care is reasonably at issue and which involve significant potential claims, permanent disability, or death shall be provided to the Chief, Bureau of Medicine and Surgery.

(b) If an investigation involves a claims matter or redress of injuries to property under Article 139, UCMJ, see Chapter IV of this Manual.

(c) See section 0218 for additional information on routing copies.

(3) The CA's action on the report should be completed within 20 days of receiving the report.

h. Review

(1) Superiors in the chain-of-command who receive a copy of a litigation-report investigation may, but are not required to, comment on the report. They should, however, take such action as may be warranted. They will not normally approve or disapprove the findings of fact. Copies must be kept in files marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguarded against improper disclosure. Copies may be provided to other commands which have an official need to know the results of the investigation, but the report shall not be otherwise disseminated without consulting a judge advocate.

(2) Staff judge advocates through which litigation-report investigations are routed shall review the report for accuracy and thoroughness, coordinate any further investigation with the cognizant judge advocate or OJAG (Code 15), and forward the report not later than 30 days after it is received. The report need not be forwarded to OJAG (Code 15), TCU, via formal endorsement.

0210 TYPE THREE: COURTS AND BOARDS OF INQUIRY

a. Overview. Courts and boards of inquiry use a hearing procedure and should be reserved for the investigation of major incidents, as that term is defined in Appendix A-2-a, or serious or significant events. Additional information on the characteristics and conduct of courts and boards of inquiry is set forth in JAGINST 5830.1 (series). If there is a conflict with that instruction, this Manual controls.

b. Court of Inquiry characteristics

(1) Convened by a GCMCA, or a person designated by the Secretary of the Navy; see Article 135, UCMJ.

(2) Consists of at least three commissioned officers as members and has appointed legal counsel for the court. It may also include advisors appointed to assist the members and non-voting members. See subsection d below for additional information on advisors and non-voting members.

(3) Convened by written appointing order.

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(4) Uses a hearing procedure. Takes all testimony under oath and records all open proceedings verbatim, except arguments of counsel, whether or not directed to do so in the appointing order.

(5) Designates as parties persons subject to the UCMJ whose conduct is subject to inquiry; see Appendix A-2-b.

(6) Designates as parties persons subject to the UCMJ or employed by the Department of Defense (DoD) who have a direct interest in the subject under inquiry and request to be so designated.

(7) Has the power to order military personnel to appear, testify, and produce evidence, and the power to subpoena civilian witnesses to appear, testify, and produce evidence. Article 47, UCMJ, provides for prosecution of civilian witnesses in U.S. district court for failing to appear, testify, or produce evidence.

c. Board of Inquiry characteristics

(1) Convened by a GCMCA.

(2) Consists of one or more commissioned officers, and should have appointed legal counsel for the board. It may also include advisors appointed to assist the members; see subsection d below for additional information on advisors.

(3) Convened by written appointing order, which should direct that all testimony be taken under oath and all open proceedings, except counsel's argument, recorded verbatim. Persons whose conduct is subject to inquiry or who have a direct interest in the subject of the inquiry may be designated parties by the CA in the appointing order. The CA may also authorize the board to designate parties during the proceedings; see Appendix A-2-b.

(4) Uses a hearing.

(5) Does not possess power to subpoena civilian witnesses unless convened under article 135, UCMJ, and Chapter IV, but can order Naval personnel to appear, testify, and produce evidence.

d. Advisors and non-voting members

(1) The CA may appoint to a court or board of inquiry full-time Federal personnel, military or civilian, to participate in the proceedings and advise the members. Such advisors may be selected because of their subject-matter expertise or because of their background, training, or experience. Advisors may be present at all board or court sessions, are subject to challenge to the same extent as members, and may suggest courses of inquiry or recommend such other action to the board or court as they consider appropriate. Moreover, persons with technical knowledge may be appointed for either full participation or the limited purpose of utilizing their special expertise. If appointed for a limited purpose, they need not participate in any aspect of the inquiry not concerning their expertise. The investigative report must clarify any limited participation by advisors.

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(2) The CA may appoint one or more non-voting members, whose level of participation in the proceedings will be as determined by the CA or the senior member of the court when so authorized by the CA. An example of when it may be appropriate to appoint a non-voting member is when a court is convened to investigate an incident in which a friendly nation or ally has a significant interest and the CA determines that it will serve the interests of the U.S. to invite a representative from the friendly nation or ally to participate, in a non-voting capacity.

e. Responsibilities

(1) The GCMCA over the command most involved in a major or serious incident, if a flag or general officer, or the first flag or general officer in the chain-of-command, or any superior flag officer in the chain-of-command, will immediately take cognizance over the case as the CA.

(2) Whenever more than one command is involved in a major or serious incident requiring formal investigation, a single investigation shall be conducted. The common superior commander shall convene the investigation in such cases, unless that officer's conduct or performance of duty may be subject to inquiry, in which case the next superior in the chain-of-command shall convene the investigation.

f. Convening order. See JAGINST 5830.1 (series) for the requirements for convening orders for courts and boards of inquiry.

g. Method. See JAGINST 5830.1 (series) for information on how courts and boards of inquiry are conducted.

h. Participation by non-parties. Other than the official members, counsel, advisors, non-voting members, and administrative support personnel, only parties may, as a general rule, participate in the proceedings of a court or board of inquiry. The CA, or the president in the case of a court of inquiry, may, however, permit the participation of an individual or organization that has an interest in the subject under inquiry. For example, the Federal Aviation Administration may be permitted to participate in an investigation inquiring into the circumstances surrounding an aircraft crash. Appropriate limits on the degree to which such participation may be conditioned should be specified in advance.

i. Time limitations. The CA shall prescribe when the report is due according to the complexity and gravity of the incident under investigation. The CA may grant extensions in writing. Requests and authorizations for extensions must be included in the report as enclosures.

j. Action

(1) Upon receiving a report from a court or board of inquiry, the CA shall review it or cause it to be reviewed, and either endorse the report in writing or return it for further investigation. In the endorsement, the CA may approve, disapprove, modify, or add to the findings of fact, opinions, and recommendations. The CA shall also indicate what corrective action, if any, is warranted and has been or will be taken. The CA shall state in the

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endorsement where the original evidence is preserved and provide the name and telephone number of the responsible official; see section 0214 for further information on the safekeeping of evidence.

(2) The CA, if not an Echelon II Commander, shall retain a copy of the report and forward the original, via all superior commanders who have a direct official interest in the recorded facts, to the appropriate Echelon II Commander or as otherwise directed. The subject matter and facts found will dictate the routing of the report for review. Reports involving Marine Corps matters shall be forwarded to the Commandant of the Marine Corps. The CA shall provide a copy to other commands that may have an interest in the report, such as the Naval Safety Center. See section 0218 for additional information on routing copies.

(3) If a court or board of inquiry is to be used as a pretrial investigation under Article 32(c), UCMJ, and the original report of investigation is desired in connection with trial by general court-martial, it may be retained for such purpose. A complete certified copy shall be forwarded to the Echelon II Commander via appropriate authorities.

(4) The CA's action on the report should be completed within 30 days of receiving the report.

k. Review. Superiors who receive a report from a court or board of inquiry shall have it reviewed, and shall forward it to the cognizant Echelon II Commander, via the chain-of-command. In their endorsements, intermediate reviewing authorities shall comment on the report and state their concurrence or disagreement with the findings of fact, opinions, and recommendations. They shall also state what action, if any, is considered warranted or has been taken. Reports, as a general rule, should be forwarded within 30 days of receipt.

l. Advance copies of investigations

(1) In all cases where it is appropriate to forward an advance copy of an investigation, the advance copy shall be forwarded by the CA and shall include that officer's endorsement.

(2) All advance copies of Marine Corps investigations shall be forwarded to the Commandant of the Marine Corps after endorsement by the CA.

PART D -- PRINCIPLES APPLICABLE TO ALL TYPES OF ADMINISTRATIVE INVESTIGATIONS

0211 CONVENING ORDERS

a. General form. Convening orders must be in official letter form, addressed from the CA to the senior member of a board or court or to the investigating officer(s) of a command or litigation-report investigation. When circumstances warrant, an investigation may be convened by oral or message order. Signed, written confirmation of oral or message orders must be issued in each case and included in the investigative report. Convening

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orders must: recite the specific purposes of the inquiry and contain explicit instructions about its scope; require findings of fact (it may, unless a litigation-report investigation is being convened, also require opinions and recommendations); and contain directions for complying with the Privacy Act, Article 31, UCMJ, section 0202 (coordinating with law enforcement authorities), and section 0220 (concerning statements about origin of disease or injury), as necessary.

b. Amendments. A CA may amend a convening order at any time to change membership, limit or increase the scope of the inquiry, or provide additional instructions. During the investigation, if it appears to the fact-finders, or to the cognizant judge advocate in the case of a litigation-report investigation, that the CA might consider it advisable to enlarge, restrict, or modify the scope of the inquiry or to change in any material respect an instruction provided in the convening order, a report shall be made to the CA. The CA may take any action on this report deemed appropriate.

0212 PERSONNEL AND COSTS

a. Member and investigating officer qualifications. Personnel detailed to conduct an investigation shall be individuals who, in the opinion of the CA, are best qualified by reason of their age, education, training, experience, length of service, and temperament. Most command or litigation-report investigations will be conducted by a commissioned officer, but a warrant officer, senior enlisted person, or civilian employee may also be used when the CA considers it appropriate. Whenever practical, an investigating officer should be senior in rank to any individual whose conduct is subject to inquiry. See section 0241 for statutory membership qualifications in conducting Class A aircraft accident JAGMAN investigations.

b. Assistance and technical support. For timely completion of an investigation, a CA may appoint reporters and interpreters, and authorize other assistance. Experts, reporters, interpreters, and so forth should be provided or appointed to a litigation-report investigation only upon the request of the cognizant judge advocate. See section 0210 regarding appointment of advisors to boards and courts of inquiry.

c. Costs. The costs of travel, per diem, consulting fees, or other related expenses of conducting or participating in an administrative investigation conducted under the authority of this Manual, will be charged to the operation and maintenance budget of the CA. See section 0146 regarding fees of civilian witnesses.

0213 OATHS

a. General. Personnel conducting a preliminary inquiry, a command investigation, or a litigation-report investigation need not be sworn.

b. Administration of oaths. Although normally not required, a person on active duty appointed to perform investigative functions for a JAGMAN investigation is empowered to administer the following oaths in the performance of duties:

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(1) For reporters: "Do you swear or affirm that you will faithfully perform the duties of reporter for this proceeding (so help you God)?";

(2) For interpreters: "Do you swear or affirm that you will faithfully perform the duties of interpreter for this proceeding (so help you God)?"; and

(3) For witnesses: "Do you swear or affirm that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (so help you God)?".

0214 PROOF OF FACTS - STANDARDS OF PROOF

a. General. An administrative investigation need not be conducted in accordance with the formal rules of evidence applicable to courts-martial. It should use the most effective methods for collecting, analyzing, and recording all relevant information and should include in its investigative report any relevant matter that a reasonable person would consider to be believable or authentic.

b. Standards of proof

(1) Preponderance of evidence. Except for facts of which a court may take judicial notice, see M.R.E. 201 and 201a, MCM, an administrative investigation shall arrive at findings of fact only if supported by a preponderance of the evidence, more likely than not, unless a higher standard is required, as set forth below.

(2) Clear and convincing. This term means that the truth of the facts asserted is highly probable. To be clear and convincing, evidence must leave no serious or substantial doubt as to the correctness of the conclusion in the mind of objective persons, after considering all the facts. It is a higher degree than a preponderance of the evidence standard, but it does not require proof beyond a reasonable doubt as in criminal cases; see also paragraph 3 of Appendix A-2-a. Findings of fact relating to the following issues must be established by clear and convincing evidence:

(a) to rebut the presumption that an injury, disease, or death has been incurred in the line of duty;

(b) to rebut the presumption of mental responsibility when the question of a member's mental responsibility has been raised by the facts or by the nature of the incident;

(c) to rebut the presumption that an unauthorized absence period of less than 24 hours did not materially interfere with the performance of the member's military duties in line of duty/misconduct cases; or

(d) to find that the acts of a deceased service member may have caused harm or loss of life, including the member's own, through intentional acts.

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(3) Inferences. An investigation may not speculate on the causes of an incident. Inferences drawn from evidentiary enclosures or personal observations, however, are permissible. For example, an investigation may determine, through tangible evidence, the likely chain of events relative to the subject of investigation. However, it is, in most cases, improper for an investigative body to theorize about the thought processes of an individual that resulted in certain courses of conduct.

c. Evidence

(1) Safekeeping

(a) To the extent consistent with mission requirements, the investigating officer and the CA will ensure that all evidence is properly preserved and safeguarded until the investigation is complete and all relevant actions have been taken. Perishable or unstable items of evidence, such as tire tracks, should be promptly photographed or otherwise preserved, preferably by trained personnel. Evidence should not be handled by untrained personnel, unless absolutely necessary to preserve its integrity.

(b) Original items with evidentiary value must be retained or adequate steps taken to ensure their safe storage. Operational commands are encouraged to make satisfactory storage arrangements with supporting elements ashore in this regard. The CA's forwarding endorsement must indicate where the evidence is maintained, what arrangements have been made for its safekeeping, and report the name and telephone number of the responsible official.

(c) For fungible items, chain-of-custody documents must also be preserved together with the evidence to which they relate. Consult a judge advocate for assistance. See OPNAVINST 5580.1 (series) for further information; OPNAV Form 5527/11 is the "Evidence/Property Custody Receipt" form and includes space for chain-of-custody documentation.

(d) Failure to properly safeguard and account for evidence may result in its inadmissibility in subsequent legal proceedings and therefore prejudice the interests of the Government.

(2) Tangible evidence. Whenever the condition, location, or other characteristic of an item of tangible evidence has probative value, include the item or a photograph, description, chart, map, or suitable reproduction in the investigative report. Discretion, however, must be exercised in enclosing graphic photographs since doing so has significant potential for shocking the sensitivities of relatives and others to whom the investigation may ultimately be released. When including such materials, place them in a separate envelope marked: "CAUTION, CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED." If an investigator or board member observes an item and gains relevant sense impressions, e.g., noise, texture, smells, or any other impression not adequately portrayed by a photograph, chart, map, or other representation, the impressions should be recorded and included as an enclosure to the report.

(3) Documentary evidence. Documentary evidence includes records, logs, documents, letters, diaries, reports, and statements. Documents should indicate their source and specify any special restrictions on their disclosure

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to third parties. Originals or authenticated copies should be obtained when possible. Completion and forwarding of investigations will not be delayed to await final reports, originals, or similar documents unless their inclusion is absolutely essential to the completion of the investigative report. Instead, the unavailability of such items should be noted and the investigation completed and forwarded. Documents subsequently obtained shall be forwarded by separate correspondence, via the review chain, with appropriate reference to the report of investigation.

(4) Photographs. When photographs are included as part of the investigation, the following information should be included on the reverse side: the hour and date they were taken; a brief description of the location or area photographed; the full name and rank or rate of the photographer; and full names and addresses of persons present when the photographs were taken. If available, the photographer should be asked to provide details surrounding the taking of the photographs such as type of camera, distance from object, and so forth. Similar information should be on a label affixed to any videotape included in the investigation.

(5) Requests for preservation of aircraft wreckage following a crash. Immediately upon receipt, all requests for the preservation of aircraft wreckage will be forwarded to NAVAIR (Air 412). If available, the original request with any attachments should be forwarded. Copies of the forwarding letter and the original request with all attachments shall be forwarded separately to OJAG (Code 15).

d. Witnesses and warnings

(1) Witnesses not suspected of misconduct or improper performance of duty

(a) Command investigations. Ordinarily, witnesses should provide statements in informal interviews. They may be required, however, to provide recorded testimony under oath. Probing questions as to "who," "what," "where," "when," "how," and "why" should be pursued. To avoid irrelevant material or omission of important facts, an investigator may assist a witness in preparing a written statement. When an investigator takes an oral statement, it should be reduced to writing and signed by the witness or certified by the investigator to be an accurate summary or verbatim transcript. Care should be taken to ensure that any statement is phrased in the actual language of the witness.

(b) Litigation-report investigations. Witnesses will be asked probing questions but they will not, in most cases, be asked to make a written statement or to sign a statement that the investigator has prepared. Rather, the investigator should summarize the results of the interview, using care to be as accurate and complete as possible, and authenticate the summary with the investigator's own signature. If, for any reason, the investigating officer believes that a witness should be asked to submit a signed statement, the cognizant judge advocate should be consulted first. For example, if a witness with interests clearly adverse to the Government's is willing to provide a signed statement that is clearly beneficial to the Government, then the cognizant judge advocate should direct the investigating officer to obtain the signed and sworn, if possible, statement.

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(c) Boards and courts of inquiry. Generally, all testimony is taken under oath in open session.

(2) Witnesses suspected of an offense, misconduct, or improper performance of duty. Ordinarily, an investigation should collect relevant information from all other sources before interviewing persons suspected of an offense, misconduct, or improper performance of duty. Also, prior liaison with the appropriate staff judge advocate is advised, to ensure investigators have coordinated with law enforcement officials and will not impede any criminal investigations into the same incident; see section 0202. Before the interview, military suspects must be advised of Article 31, UCMJ, warnings; see Appendix A-1-m. Civilian personnel offices should be consulted about applicable collective bargaining requirements before interviewing civilian employees suspected of misconduct.

(3) Cautioning witnesses. To reduce the possibility that disclosure of witnesses' testimony may influence the testimony of future witnesses, an investigating officer may direct witnesses subject to naval authority not to discuss their testimony. Witnesses not subject to Naval authority may be requested not to discuss their testimony.

(4) Statements regarding origin of disease or injury. Prior to being asked to provide any statement relating to the origin, incidence, or aggravation of a disease or injury, the affected member shall be warned of the right not to make such a statement. Without this warning, the statement is invalid; see 10 U.S.C. § 1219 and section 0220c of this Manual. Where a statement relating to the origin, incidence, or aggravation of a disease or injury is invalid, the member may be provided the warning, advised that the prior statement is invalid and cannot be used in any way, and then asked to reiterate the statement. If the member then elects to provide another statement, it may be included in the investigation.

0215 PRIVACY ACT COMPLIANCE

Per the Privacy Act, 5 U.S.C. § 552a, and SECNAVINST 5211.5 (series), see Chapter V of this Manual, the following procedures apply to administrative investigations conducted under this Manual:

a. Advice required. When the Government requests an individual to supply personal information, see appendix A-2-a for the definition of "personal information," about himself in a statement to be maintained in a system of records retrievable by the individual's name or personal identifier, the individual shall be provided in duplicate a Privacy Act statement containing the particular information prescribed in SECNAVINST 5211.5 (series). The requirement for a Privacy Act statement is separate from other applicable warnings or advisement. Requests for information about what a Government officer, employee, or member did, observed, or thought while performing official duties does not require a Privacy Act statement.

b. Social Security numbers. A Privacy Act statement must be used if a member or employee is asked to voluntarily provide his Social Security number for an investigation. If Social Security numbers are obtained from other

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sources (e.g., service records), the individual need not be provided a Privacy Act statement. If Social Security numbers are obtained from other sources, this should be noted in the preliminary statement of the investigation. Social Security numbers should not be included in investigation reports unless they are necessary to identify precisely the individuals in question, such as in cases involving serious injury or death.

c. Procedure and contents. The original Privacy Act statement should be signed by the individual and appended to the record of the investigation. The individual retains the duplicate. If the information is requested in an interview or hearing, the Privacy Act statement should be orally summarized and explained to ensure that the individual fully understands it. Appendix A-2-e contains proposed language that includes information required for a Privacy Act statement. Locally prepared forms in the format of Appendix A-2-e are authorized.

d. Reviewing authorities. Prior to forwarding an investigative report, the CA will ensure compliance with the Privacy Act.

e. Records of disclosure. Appendix A-2-f is recommended for use in recording and accounting for disclosures of information about identifiable individuals from records that are collected, used, or maintained under the authority of this Manual. Local reproduction is authorized.

0216 INVESTIGATIVE REPORTS

a. General. Investigative reports shall be submitted in the format prescribed by the CA or, in the case of a litigation-report investigation, by the cognizant judge advocate. Normally, a letter format will be specified. Appendices A-2-c and A-2-d are sample investigative reports.

b. Classification. Since investigative reports may be circulated widely, classified information should be omitted unless inclusion is absolutely essential. If unclassified information is important to the report's accuracy but is contained in a classified document, then the unclassified information should, if possible, be extracted from the classified document and included in the investigative report. When classified matter must be included, the report shall be classified at the highest level of any classified matter contained therein. Encrypted versions of messages shall not be included or attached to investigative reports where the content or substance of such message is divulged elsewhere in the report.

c. Preliminary statement

(1) A preliminary statement informs convening and reviewing authorities that all reasonably available evidence was collected or is forthcoming and each directive of the convening authority has been met. After setting forth the nature of the investigation, the preliminary statement details difficulties encountered, extensions requested and granted, limited participation by any member or advisor, and any other information necessary for a complete understanding of the case. The itinerary of an investigator or board in obtaining information is not required.

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(2) The preliminary statement in a litigation-report investigation shall state expressly that the report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the U.S.

(3) A preliminary statement does not eliminate the necessity for findings of fact. For example, notwithstanding statements in both the subject line and the preliminary statement that the investigation involves an aircraft accident and death of the pilot, the findings of fact must describe the aircraft, time, and place of the accident, identify the pilot, and provide other relevant information.

d. Findings of fact. Findings of fact must be as specific as possible as to times, places, persons, and events. Make each fact a separate finding, and cite the enclosure supporting each finding.

e. Opinions. Opinions are reasonable evaluations, inferences, or conclusions based on the facts found. Each opinion must cite the findings of fact upon which it is based. In the case of a litigation-report investigation, opinions shall not be expressed unless requested by the CA, or by the cognizant judge advocate.

f. Recommendations. Recommendations depend on the nature of the facts found and opinions expressed. Recommendations shall not be offered unless requested by the CA, or by the cognizant judge advocate in the case of a litigation-report investigation. The CA or cognizant judge advocate may require recommendations in general or limited subject areas. Unless directed by proper authority, an investigator shall not prefer charges, because preferral of charges starts the "speedy trial clock" running, or notify an accused of recommended charges. For recommendations pertaining to the issuance of punitive and nonpunitive letters, see section 0217.

g. Signing and authentication

(1) Command investigations and boards and courts of inquiry. The investigating officer or senior member, or in the senior member's absence, the next senior member, respectively, must sign the investigative report. Dissents may be written and, if written, must be attached to the report.

(2) Litigation-report investigations. The investigating officer and the cognizant judge advocate should both sign the investigative report. If, however, they cannot agree on a particular portion of the report, then the judge advocate alone shall sign the report. The investigating officer may, but is not required to, separately document the basis for any disagreement.

h. Enclosures

(1) General. The first enclosure is the signed, written appointing order or signed, written confirmation of an oral or message appointing order. Subsequent enclosures should contain all evidence developed by the investigation. Each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibit should be a separate enclosure. Enclosures should be listed in the order in which they are cited in the body of the investigation.

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(2) NCIS investigations. NCIS investigations consist of the report of investigation (ROI), the narrative summary portion, and enclosures. ROI's shall not be included in administrative investigation reports. Unless a local NCIS office indicates to the contrary, clearance is not required for inclusion of enclosures to the ROI in an administrative investigative report. Neither polygraph reports nor their results may be included in the investigative report; however, the fact that a polygraph examination occurred and the location of the file maintained by the investigative agency administering the polygraph examination may be noted. Comments regarding an individual's refusal to undergo a polygraph examination shall not be included in any administrative investigative reports. If necessary for a full understanding of the incident, the location of the ROI should be cross-referenced in the administrative investigative report.

(3) Authentication. Signatures of board members or of the investigating officer(s) on an investigative report shall be sufficient to authenticate all enclosures, see the next section on photographs.

(4) Photographs. Convening authorities shall ensure compliance with sections 0214 and 0233 when photographs are included as part of the investigation. In addition, CAs shall ensure that the negatives of the photographs are placed in a sealed envelope and forwarded with the original investigation in all cases except those investigations conducted as a result of an admiralty incident; in those cases, section 1207 shall apply.

0217 DISCIPLINARY ACTION

Whenever punitive or nonpunitive action is contemplated or taken as the result of the incident under inquiry, the action shall be noted in the endorsement of the convening or reviewing authority. For example, the endorsement could read: "Punitive action is not warranted; however, appropriate corrective measures were taken in the case of ENS Smith." Punitive letters, or copies of recommended drafts thereof, shall be included in the investigative report as enclosures. Nonpunitive letters, or recommended drafts, are private in nature and shall not be specifically mentioned in endorsements or included as enclosures in the investigative report. Drafts shall be separately forwarded to the appropriate commander for issuance. Except where an individual was afforded the rights of a party, nonjudicial punishment may not be predicated exclusively upon the findings of an investigation conducted under this chapter, nor may the report of such an investigation be used in lieu of a pretrial investigation under Article 32(c), UCMJ.

0218 ROUTING COPIES

a. Number of copies. One complete copy of the investigation shall be forwarded with the original for each intermediate reviewing authority. In cases involving death or injury of members, the original shall be forwarded with sufficient copies so that the ultimate addressee receives the original and two copies. If one command conducted an investigation upon the request of another, then a copy of the report should be sent to the requesting command.

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b. Cases involving injury or death of Naval personnel or damage to ship, submarine, aircraft, or other Government property. The CA shall forward an advance copy of the record or report of investigation as soon as practical in cases involving injuries and deaths of Naval personnel or material damage to a ship, submarine, or Government property (except aircraft) to: Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511-5796. Commanders subsequently reviewing such a record or report shall forward advance copies of their endorsements as above. In cases of aircraft accidents, advance copies of investigations and endorsements thereon will be forwarded to Commander, Naval Safety Center only upon request. In cases involving potential claims or civil lawsuits, advance copies will be provided to the Office of the Judge Advocate General (Code 15), Tort Claims Unit, 9620 Maryland Avenue, Suite 100 Norfolk, VA, 23511-2989.

c. Medical malpractice cases. Two copies of investigative reports into potential medical malpractice cases should be provided to Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC, 20350-2000.

d. Commands receiving copies of investigative report that want to comment or make recommendations. Commands receiving copies of investigative reports may provide all or some of the commands concerned with their comments and recommendations; these comments do not become part of the investigative report unless a reviewing authority expressly incorporates them.

0219 RELEASE OF INVESTIGATIONS

Release of administrative investigation reports outside DON is governed by SECNAVINST 5720.42 (series), FOIA Program, and SECNAVINST 5211.5 (series), Privacy Act Program. Also see Chapter V of this Manual.

a. General. As a general rule, no investigative report, evidence, or documents compiled by investigating officials may be released until the report is final, see sections 0208 and 0233. In the case of aircraft accidents investigated under the provisions of this Manual, only the Secretary of the Navy may release unclassified tapes, scientific reports, and other factual information pertinent to an aircraft accident investigation before the release of the final accident report, per 10 U.S.C. § 2254. Requests for the release of evidence, including unclassified tapes, scientific reports, and other factual information, in aircraft investigations shall be forwarded expeditiously via the chain-of-command and OJAG (Code 15) to the Secretary of the Navy. In death investigations, see section 0233 for next-of-kin release considerations.

b. Classified information. The Chief of Naval Operations (N09N) is the release authority for investigations involving actual or possible loss or compromise of classified information.

c. Litigation report investigations. For all litigation-report investigations, OJAG (Code 15) is the release authority. Convening and reviewing commands are not authorized to release litigation-report investigations or their contents; see Chapter V of Manual.

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d. Command investigations. For command investigations, other than those dealing with possible compromise of classified information, the GCMCA to whom the report is forwarded is ultimately the release authority.

e. Courts and Boards of Inquiry. For courts and boards of inquiry, the cognizant Echelon II Commander is the release authority.

PART E -- LINE OF DUTY/MISCONDUCT

0220 WHEN LINE OF DUTY/MISCONDUCT DETERMINATIONS ARE REQUIRED

a. General. If a member incurs a disease or injury that may result in a permanent disability or that results in the member's physical inability to perform duty for a period exceeding 24 hours, as distinguished from a period of hospitalization for evaluation or observation, then determining whether the disease or injury was incurred in the line of duty or as the result of misconduct is very important. An injury or disease suffered by a member of the Naval service will, however, be presumed to have been incurred in the line of duty and not as a result of misconduct, unless contrary findings are made.

b. Death cases. A line of duty determination is required whenever an active duty service member of the Naval service dies, in order to make decisions concerning eligibility and annuity calculations under the Uniformed Services Survivor Benefit Program; see Part F, section 0236 of this Manual.

c. Warning required. Any person in the Armed Forces, prior to being asked to sign any statement relating to the origin, incidence, or aggravation of any disease or injury that he has suffered, shall be advised of the right not to sign such a statement; see 10 U.S.C. § 1219. The spirit of this section will be violated if a person, in the course of an investigation, obtains the member's oral statements and reduces them to writing, unless the above advice was given first. Compliance with this section must be documented; see Appendix A-2-g for a sample.

0221 WHY LINE OF DUTY/MISCONDUCT DETERMINATIONS ARE REQUIRED

a. General. Line of duty/misconduct determinations are extremely important since they control several personnel actions. The most important are survivor benefit plan (SBP) benefits, disability retirement pay, and severance pay.

b. Disability retirement and severance pay. To be eligible to receive certain retirement and severance pay benefits, members of the Naval service on active duty who sustain injuries resulting in permanent disability must have received those injuries in the line of duty and not due to their own misconduct. 10 U.S.C. §§ 1201, 1203, 1204, 1206, and 1207 require a determination that "the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence." Although the degree and permanent nature of the disability will be determined pursuant to SECNAVINST 1850.4 (series), the

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determination regarding line of duty/misconduct will be made by the line commander in accordance with the provisions of this chapter. The line of duty/misconduct determination made pursuant to this chapter will be binding on the Physical Evaluation Board, subject to limitations set forth in SECNAVINST 1850.4 (series).

0222 WHAT CONSTITUTES LINE OF DUTY

a. General. For purposes of these regulations only the award of disability, retirement, and severance pay are bound by separate standards regarding injuries incurred during a period of unauthorized absence, see subsection d(2) below. Injury or disease incurred by Naval personnel while in active service, and death incurred by Naval personnel on active duty, will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

(1) as a result of the member's own misconduct as determined under the regulations contained in this chapter;

(2) while avoiding duty by deserting;

(3) while absent without leave and such absence materially interfered with the performance of required military duties; see subsection d below;

(4) while confined under a sentence of court-martial that included an unremitted dishonorable discharge; or

(5) while confined under a sentence of a civil court following a conviction of an offense that is defined as a felony by the law of the jurisdiction where convicted.

b. Active service defined. "Active service" as used in this section includes full-time duty in the Naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training. Inactive duty training is duty prescribed for reservists by the Secretary of the Navy and special additional duties authorized for reserves, performed voluntarily in connection with prescribed training or maintenance activities at their units; see OPNAVINST 1770.3 (series).

c. Active duty defined for death cases. Active duty for purposes of line of duty determinations in death cases is defined in 10 U.S.C. § 101(d)(1). It includes active duty for training, even for periods less than 30 days, and inactive duty for training. The term inactive duty training is defined in 37 U.S.C. § 206.

d. Unauthorized absence

(1) Whether absence without leave materially interferes with the performance of required military duties necessarily depends upon the facts of each situation, applying a standard of reality and common sense. No definite rule can be formulated as to what constitutes "material interference." Generally speaking, absence in excess of 24 hours constitutes a material

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interference unless evidence to the contrary exists. Similarly, an absence of shorter duration will not be considered a material interference unless there is clear and convincing evidence to establish the contrary. A statement of the individual's commanding officer, division officer, or other responsible official, and any other available evidence to indicate whether the absence constituted a material interference with the performance of required military duties, should be included in the record whenever appropriate.

(2) Per 10 U.S.C. § 1207, a member is ineligible for physical disability retirement or physical disability severance benefits from the Armed Forces if the disability was incurred during a period of unauthorized absence, regardless of the length of such absence and regardless of whether such absence constituted a material interference with the performance of required military duties. Therefore, any injury incurred during a period of unauthorized absence requiring a line of duty/misconduct determination pursuant to the provisions of section 0220, must be the subject of a command investigation.

0223 WHAT CONSTITUTES MISCONDUCT

a. Generally. "Misconduct," as used in this chapter, is a term of art. It is more than just inappropriate behavior. An injury or disease is the result of a member's misconduct if it is either intentionally incurred or is the result of willful neglect that demonstrates a reckless disregard for the foreseeable and likely consequences of the conduct involved. For death cases, see sections 0225 and 0236. Simple or ordinary negligence, or carelessness, standing alone, does not constitute misconduct. The fact that the conduct violates law, regulation, or order, or is engaged in while intoxicated, does not, alone, constitute a basis for a misconduct determination.

b. Presumption. An injury, disease, or death suffered by a member of the Naval service is presumed to have been incurred in the line of duty and not to be the result of misconduct. Clear and convincing evidence, see section 0214, is required to overcome this presumption.

c. Examples. If an individual deliberately shoots off a toe to avoid duty, the injury is due to misconduct since it was intentionally incurred. If an individual shoots off a toe while playing Russian roulette, the injury is due to misconduct since such conduct demonstrates a reckless disregard for the foreseeable and likely consequences. If an individual shoots off a toe while holstering a pistol with the safety off, the injury is not due to misconduct; rather, it is the result of the negligent failure to observe a safety precaution.

0224 RELATIONSHIP BETWEEN MISCONDUCT AND LINE OF DUTY

a. General. For purposes of these regulations, "misconduct" can never be "in line of duty." Hence, a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty." It is permissible, however, to find that an injury was incurred "not as a result of misconduct" and "not in line of duty." As an example, a member

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who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously, the injury was incurred through no fault of the member, but if the absence interfered with the performance of his required military duties a finding of "not in line of duty" must result.

b. Possible findings. The only possible combinations of findings are:

(1) "In line of duty" and "not due to the member's own misconduct;"

(2) "Not in line of duty" and "not due to the member's own misconduct;" and

(3) "Not in line of duty" and "due to the member's own misconduct."

0225 MENTAL RESPONSIBILITY

a. General rule. A member may not be held responsible for particular actions and their foreseeable consequences if, as the result of mental defect or disease, the member was unable to comprehend the nature of such acts or to control his actions.

b. Presumption. In the absence of evidence to the contrary, all members are presumed to be mentally responsible for their acts. If a question of the mental responsibility of a member is raised by the facts or by the nature of the incident, this presumption ceases and the investigation must clearly and convincingly establish the member's mental responsibility before an adverse determination can be made.

c. Suicide attempts and suicides. In view of the strong human instinct for self-preservation, suicide and a bona fide suicide attempt, as distinguished from a suicidal gesture, creates a strong inference of lack of mental responsibility. Self-inflicted injury, not prompted by a serious suicidal intent, is at most a suicidal gesture, and such injury, unless lack of mental responsibility is otherwise shown, is deemed to be incurred as the result of the member's own misconduct; see section 0236.

0226 INTOXICATION AND DRUG ABUSE

a. Intoxication. In order for intoxication alone to be the basis for a misconduct determination, clear and convincing evidence must show that the member was intoxicated sufficiently to impair the rational and full exercise of his mental or physical faculties at the time of the injury and that the impairment was the proximate cause of the injury. Intoxication or impairment may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor.

b. Presumption

(1) In cases involving alcohol, it may be presumed that when a member has a blood-alcohol content of .10 percent by volume or greater, the member was sufficiently intoxicated to impair the rational and full exercise of his mental or physical faculties. This presumption is rebuttable but, if not

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rebutted, is of sufficient strength to provide clear and convincing evidence of the member's impairment. The presumption alone, however, does not establish anything about the proximate cause of the injury.

(2) For example, if a sailor is injured while driving with a voluntarily induced blood-alcohol content of .10 percent by volume or greater, then it may be presumed that the sailor was impaired due to intoxication to the extent that he could not fully exercise his mental or physical faculties at the time of the wreck. To find misconduct, however, it still must be shown that the resulting impairment was the proximate cause of the injury. Thus, if the accident were caused solely by the wrongdoing of another driver, then the sailor's impairment was not the proximate cause of the injury.

(3) Intoxication, as described in section 0226, may also be found when there is no blood-alcohol content measurement available or when it measures less than .10 percent by volume. In such cases, all relevant information concerning the member's condition at the time of the injury or incident should be considered.

c. Alcohol and drug-induced disease. Inability to perform duty resulting from disease directly attributable to a specific, prior, proximate, and related intemperate use of alcohol or habit-forming drugs is the result of misconduct, see 37 U.S.C. § 802. Time spent in evaluating habituation without specific inability to perform duty shall not be charged as time lost due to misconduct.

0227 REFUSAL OF MEDICAL AND DENTAL TREATMENT

If a member unreasonably refuses to submit to medical, surgical, or dental treatment, any disability that proximately results from such refusal shall be deemed to have been incurred as a result of the member's own misconduct; see chapter 18, Manual of the Medical Department.

0228 RELATIONSHIP TO DISCIPLINARY ACTION

An adverse line of duty/misconduct determination is not a punitive measure. If warranted, commanders should take independent disciplinary action. Similarly, a favorable line of duty/misconduct determination does not preclude separate disciplinary action. Nor is such a favorable determination relevant or binding on the issue of guilt or innocence of the member in a separate disciplinary proceeding.

0229 HOW LINE OF DUTY/MISCONDUCT DETERMINATIONS ARE RECORDED

a. General. As noted above, injuries or disease suffered by Naval personnel are presumed to have been incurred in the line of duty and not as a result of a member's misconduct. Each injury or disease requiring line of duty/misconduct determinations, see section 0220, must be the subject of a preliminary inquiry; see section 0236 for LOD determinations in death cases. If, however, following a preliminary inquiry, the conditions set forth in subparagraph (c) below are met, then the member's command need not convene an

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investigation and need not report the line of duty/misconduct determinations separately. Thus, if appropriate entries in the member's health or dental records are made, and the command does not convene an investigation, then the presumption that the member's injuries or disease were incurred in the line of duty and were not a result of the member's misconduct will not be rebutted.

b. Reporting. If the command completing the preliminary inquiry is not a GCMCA, the command will report the circumstances surrounding the injury and results of the preliminary inquiry to its GCMCA using the Personnel Casualty Report system; see MILPERSMAN 1770-030. Unless the GCMCA directs otherwise, the command will provide a copy of this preliminary inquiry report to the appropriate medical department for inclusion in the health or dental record as part of the entry described in subparagraph c. The GCMCA may review the preliminary inquiry and order an investigation.

c. Entry in health or dental record. An investigation need not be convened and a report need not be forwarded concerning misconduct and line of duty when, in the opinion of the medical officer or senior representative of a medical department, with the concurrence of the member's commanding officer, the injury or disease was incurred "in line of duty" and "not as a result of the member's own misconduct" and appropriate entries to this effect have been made in the member's health or dental record; see chapter 16, Manual of the Medical Department.

d. Command investigations. A command must convene an investigation and make findings concerning misconduct and line of duty when --

(1) the injury was incurred under circumstances which suggest a finding of "misconduct" might result. These circumstances include, but are not limited to, all cases in which a qualifying injury was incurred --

(a) while the member was using illegal drugs;

(b) while the member's blood alcohol content was of .10 percent by volume or greater. This does not preclude the convening of an investigation if the blood-alcohol percentage is lower than .10, if the circumstances so indicate; or

(c) as a result of a bona fide suicide attempt.

(2) the injury was incurred under circumstances that suggest a finding of "not in line of duty" might result;

(3) there is a reasonable chance of permanent disability and the commander considers the convening of an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident; or

(4) the injured member is in the Naval Reserve or the Marine Corps Reserve and the commander considers an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident. See OPNAVINST 1770.3 (series) for additional information on Reserve Component Incapacitation Benefits and their relationship to line of duty/misconduct findings.

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0230 ACTION BY REVIEWING AUTHORITIES

a. Action by convening authority. Unless the report is returned for further inquiry into the circumstances behind the disease or injury, see Part F of this Manual for death cases, the CA will make a line of duty/misconduct determination by taking one of the following actions:

(1) If the CA concludes that an injury or disease was incurred in line of duty and not due to the member's own misconduct or that clear and convincing evidence is not available to rebut the presumption of in line of duty/not due to misconduct, this conclusion shall be expressed in the action on the record of proceedings. This action may be taken regardless of whether it differs from or concurs with an opinion expressed by the investigating officer.

(2) If, upon review of the report, the CA or higher, believes that the injury or disease of the member was incurred not in line of duty or due to the member's own misconduct, then prior to taking action that authority must afford the member, or the member's representative if the member is mentally incompetent to understand the nature of the action, notice of the preliminary determination and an opportunity, not exceeding 10 days, to submit any desired information for the CA's consideration. Additional time may be granted by the CA for good cause.

(a) The member will be advised that he does not have to make any statement relating to the origin, incidence, or aggravation of any injury or disease. If any information is obtained from the member, a statement attesting that the above warning was given must be attached; see section 0220 and Appendix A-2-g.

(b) If the member is also suspected or accused of any offense under the UCMJ, then the member should also be advised in accordance with Article 31, UCMJ, and of rights to counsel. Suspect's Rights Acknowledgement/Statement forms should be used for such advice; see Appendix A-1-m of this Manual.

(c) Upon request, the member may be permitted to review the investigative report but not to copy it. After the report is final, the member may have a right under the Privacy Act to a copy of the report; see Chapter V of this Manual for further information.

(d) If the member elects to provide any information, it shall be considered by the CA and attached to the record.

(e) If the member elects not to provide any information, or fails to respond within 10 days, that election or failure shall be noted in the CA's endorsement.

b. Action by general court-martial convening authority

(1) Unless the CA is a GCMCA, the report shall be forwarded via the chain-of-command to a GCMCA with an assigned judge advocate. This GCMCA may take any action on the report that could have been taken by the CA. With respect to conclusions concerning misconduct and line of duty, the GCMCA shall

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indicate approval, disapproval, or modification of such conclusions unless the record is returned for further inquiry. A copy of this action shall be forwarded to the commander of the member concerned, so that appropriate entries may be made in the member's service and medical records, see below. Reviewing authorities subsequent to the GCMCA, if any, need neither comment nor record approval or disapproval of the prior actions concerning line of duty and misconduct.

(2) The investigation should not normally be forwarded to the Judge Advocate General.

(3) Copies of the report shall be provided to --

(a) the Naval Safety Center when the report reveals systemic safety problems;

(b) OJAG (Code 15), TCU, if potential claims by or against the Government may be involved; this is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims; and

(c) other commands having a direct official interest in the matter.

(4) The GCMCA shall keep the original investigation for a period of 2 years.

c. Follow-up actions. As noted above, after the GCMCA reviews and approves the line of duty/misconduct findings, the commander of the concerned member must cause appropriate service and health record entries to be made to include the GCMCA action. A copy of the GCMCA action will be made an enclosure to all line of duty/misconduct health record entries resulting from command investigations. In this regard, the following information is provided:

(1) Extension of enlistment. An enlisted member of the Naval service, unable to perform duties for more than one day because of intemperate use of drugs or alcohol or because of disease or injury resulting from the member's misconduct, must, after returning to full duty, serve for a period that, when added to the period previously served, amounts to the term for which the member enlisted or was inducted; see 10 U.S.C. § 972.

(2) Longevity and retirement multiplier. Eligibility for increases in pay because of longevity and the amount of retirement pay to which a member may be entitled is dependent upon cumulative years of "creditable service." An enlisted member who is unable to perform duties for more than one day because of intemperate use of drugs or alcohol or because of disease or injury resulting from misconduct is not entitled to include such periods in computing "creditable service." See DoD Financial Management Regulation (DoDFMR), DOD 7000.14-R, Volume 7A, Military Pay Policy and Procedures - Active Duty and Reserve Pay.

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(3) Forfeiture of pay. A member of the Naval service on active duty who is absent from regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately follows intemperate use of alcohol or habit-forming drugs is not entitled to pay for the period of that absence. If pay is forfeited for more than one month, however, the member is entitled to $5.00 for personal expenses for each month that his pay is forfeited. Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for diseases not directly caused by and immediately following intemperate use of liquor or habit-forming drugs. See DoDFMR, DOD 7000.14-R, Volume 7A, Chapter 1, Basic Pay.

(4) Disability retirement and severance pay. As noted in section 0221, to be eligible for disability retirement or severance pay, a member's injuries must meet the requirements established by applicable statutes. One of these requirements is that the injury/disability not be the result of the member's "intentional misconduct or willful neglect" nor have been "incurred during a period of unauthorized absence." The Physical Evaluation Board in awarding any disability payment in accordance with SECNAVINST 1850.4 (series) is bound by line of duty/misconduct determinations made pursuant to this chapter.

(5) Benefits administered by the Department of Veterans Affairs. In determining whether a veteran or the veteran's survivors or dependents are eligible for certain benefits, the Department of Veterans Affairs makes its own determination with respect to misconduct and line of duty. As a practical matter, these determinations often rest upon the facts that have been officially recorded and are on file within the DON. Statutes governing these benefits generally require that disabling injury or death be "service connected," which means the disability was incurred or aggravated, or, that the death resulted from a disability incurred or aggravated "in line of duty." See 38 U.S.C. § 101. The statutory criteria for making such determinations are contained in 38 U.S.C. § 105.

0231 SPECIAL CONSIDERATIONS IN RESERVE COMPONENT CASES

Pursuant to DODD 1241.1, CA's must issue "interim" line of duty determinations within seven days of being notified that a reservist not on the active duty list has an incapacitating injury or illness incurred or aggravated while on active duty, including leave and liberty therefrom, active duty for training, inactive duty training, or travel to or from such duty. This interim determination is intended to ensure that the reservist's incapacitation pay can be started without delay. If the final line of duty/misconduct determination is adverse to the member, immediate action must be taken to stop incapacitation benefits; see OPNAVINST 1770.3 (series) for further information.

0232 CHECKLIST FOR LINE OF DUTY/MISCONDUCT INVESTIGATIONS

The following is a checklist of matters that should be included, as applicable, in any report of an investigation convened to inquire into and make recommendations concerning misconduct and line of duty under the provisions of this chapter.

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a. Identifying information. The complete name, grade or title, service or occupation, and station or residence of all persons, military and civilian, killed or injured incident to the event under investigation; see section 0215 for advice required to be given by the Privacy Act if social security numbers are requested.

b. Facts. All facts leading up to and connected with an injury, disease, or death.

c. Records. Military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquests or medical examiners' reports, and pathological, histological, and toxicological studies. If originals cannot be included, then the report shall state where the originals are located and the name and telephone number of the official responsible for their safekeeping.

d. Site of incident. Complete information concerning the site and terrain where the incident in question occurred as well as photographs, videotapes, maps, charts, diagrams, or other exhibits that may be helpful to a complete understanding of the incident. When photographs are included as part of the investigation, the following information should be included on the reverse side: the hour and date they were taken; a brief description of the location or area photographed; the full name and rank or rate of the photographer; and full names and addresses of persons present when the photographs were taken. If available, the photographer should be asked to provide details surrounding the taking of the photographs such as type of camera, distance from object, and so forth. Similar information should be on a label affixed to any videotape included in the investigation.

e. Duty status. Include all pertinent facts with respect to the duty, leave, liberty, or unauthorized absence status of an individual at the time of the incident.

f. Reserves. When the person involved is a member of a Reserve component of the Navy or Marine Corps, complete information as to the member's status in relation to extended active duty, active duty for training, or inactive duty training, or travel to and from such duty, at the time of the incident must be stated.

g. Injuries. Complete information as to the nature and extent of all injuries to Naval personnel and the place and extent of any hospitalization resulting therefrom. Include costs when civilian facilities are used. Also include the amount of "lost" time.

h. Impairment. Refer to section 0226 regarding applicable presumption. When relevant, evidence regarding the state of intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident. Evidence as to the individual's general appearance and behavior, rationality of speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be obtained and recorded. Efforts shall be made to determine the quantity and nature of the intoxicating agent used and the period of time over which used by the person. Results of any

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blood, breath, urine, or tissue tests for the intoxicating agent should also be obtained and submitted as exhibits.

i. Mental competence. When material, evidence regarding the mental competence or impairment of the deceased or injured person. In all cases of suicide or attempted suicide, evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence as to social background, actions, and moods immediately prior to the suicide or the suicide attempt, any troubles that might have motivated the incident, and any relevant medical or counseling information.

j. Privacy Act. Document that each enclosure containing personal information solicited from an individual for inclusion in a record system retrievable by name or personal identifier complies with the Privacy Act; see section 0215.

k. Warnings about injury or disease. Document that statements solicited from an injured member respecting the incidence or aggravation of his disease or injury are in compliance with section 0220.

PART F -- SPECIAL CONSIDERATIONS IN DEATH CASES

0233 GENERAL

a. Special considerations. The circumstances surrounding the death of Naval personnel, or of civilian personnel at places under military control, may be recorded in a variety of ways, such as autopsy reports, battlefield reports, and medical reports. Investigations conducted pursuant to this Manual may also focus on such deaths and may incorporate other official reports as enclosures. Since reports pertaining to deaths of military members are by law generally releasable to family members, special considerations prevail in the investigation of death cases.

b. NCIS notification. NCIS must be notified of any death occurring on a Navy vessel or Navy/Marine Corps aircraft or installation, except when the cause of death is medically attributable to disease or natural causes.

c. Time limitations. The period for completing the administrative investigation report/record into a death shall not normally exceed 20 days from the date of the death, or its discovery. For good cause, however, the CA may extend the period. Requests and authorizations for extensions must be coordinated with the next reviewing authority. The CA and subsequent reviewers have 20 days to review and endorse the investigation. Noncompliance with these time requirements must be explained in the endorsement of the deviating command and commented upon by subsequent endorsers. See MILPERSMAN 1770-060 for the requirement to submit Status Investigation Reports.

d. Release of death investigations

(1) Policy for release to next of kin. As a normal rule, death investigations reports/records shall not be released to the public until they are final; see section 0219. In the interest of providing the decedent's next

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of kin with timely information, however, it is DON policy that upon completion of the review by the first flag officer in the chain of command, the reviewer shall release an advance copy of the investigation, per a request, to the next of kin. The release of an advance copy to requesting next of kin shall be made unless release would violate law, e.g., investigation classified, or the endorser can articulate how release would harm the command's mission, or would interfere with an ongoing criminal investigation, or why release should not be made for good cause. If an endorser does not wish to release an investigation to requesting next of kin, this decision shall be coordinated with OJAG (Code 13), at 703-604-8200/DSN 664-8200.

(2) Delivery to next of kin. In providing death investigations to the next of kin, consideration should be given to the potential impact of the report. Section 0240 directs that graphic photographs are to be separately wrapped and labeled. Similar procedures should be employed for autopsy reports and other written materials containing graphic details of injury, wounds, mutilation, etc. In order to assist those who may still be grieving to understand the meaning and significance of the report of investigation, releasing authorities should ensure, when reasonable, hand delivery of the report by someone who can discuss it with the family. Normally, the Casualty Assistance Calls Officer(s) would make the delivery, but there may be reasons (technical subject-matter, personal friendships, etc.) for another individual to be assigned this task.

0234 WHEN INVESTIGATIONS OF DEATH CASES ARE REQUIRED

A preliminary inquiry, see section 0203, shall, as in any other circumstance potentially warranting an investigation, be conducted into the death of a member of the Naval service or into the death of a civilian aboard a place under Naval control. At the conclusion of the preliminary inquiry, the commander must determine which of the options listed in section 0204 will be exercised, and report that decision to the next superior in the chain-of-command; see section 0203h(2). Normally, a command investigation, or a limited investigation, will be appropriate to inquire into a death case that warrants investigation under the below guidelines. A court or board of inquiry is appropriate in some cases, as discussed below. In deciding on the type and necessity of investigation, the commander shall consider the following:

a. No investigation required. An investigation under this Manual will normally not be conducted if the preliminary inquiry shows that the death:

(1) was the result of a previously known medical condition and the adequacy of military medical care is not reasonably in issue; or

(2) was the result of enemy action, but see subsection b(4) below.

b. Investigation required. An investigation under this Manual shall be conducted if the preliminary inquiry shows:

(1) the case involves civilian or other non-Naval personnel found dead aboard an activity under military control, where the death was apparently caused by suicide or other unusual circumstances;

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(2) the circumstances surrounding the death place the adequacy of military medical care reasonably at issue;

(3) the case involves the death of a military member and a probable nexus exists to Naval service, except where the death is as a result of enemy action, see sections b(4) and (c) below; or

(4) it is unclear if enemy action caused the death, such as in possible "friendly-fire" incidents.

c. Limited investigation required. If the preliminary inquiry shows that the death of a service member occurred at a location in the U.S. but not under military control, while the member was off-duty, and the circumstances of the death had no discernable nexus to the Naval service, the command shall obtain the results of the investigation of the incident by civilian authorities and maintain the results as an internal report. The command shall document, in writing, the reasons for making the determination to conduct a limited investigation, attaching the enumerated reasons to the internal report. Completion of these actions shall follow the time constraints noted for the processing of command investigations and will constitute final action on the report.

0235 AUTOPSIES

a. General. When the death of a member of the uniformed services on active duty, or active duty for training, occurs under any of the circumstances set forth in chapter 17, Manual of the Medical Department, and when an autopsy is authorized by the member's commander, and in other cases in which authorization from proper authority has been obtained, the preliminary inquiry officer shall provide the medical officer designated to conduct the autopsy with a preliminary report of the circumstances surrounding the death. In those cases in which authorization for autopsy has been granted by other than the member's commanding officer, the medical officer shall be responsible for advising command authority that such authorization has been granted in order to facilitate the preliminary investigation and report thereof to the medical officer conducting the autopsy. Upon completion of the autopsy, the medical officer conducting the autopsy shall provide the preliminary inquiry officer, or investigating officer, a copy of the preliminary autopsy findings as to the cause of death and, when completed, a copy of the final protocol. The medical officer conducting the autopsy should be provided with a copy of the final investigative report, if an investigation is convened. DODD 6010.16 and NAVMED P5065 refer to issues of authorization of autopsies.

b. Unavailability of documents. Notwithstanding the guidance above, completion of a death investigation and its forwarding will not be delayed to await final autopsy reports, death certificates, or similar documents unless their inclusion is absolutely essential to the completion of the investigative report. The unavailability of such documents should be noted and the investigation completed and forwarded. Documents subsequently obtained shall be forwarded by separate correspondence via the review chain, with appropriate reference to the report of investigation/forwarding endorsement.

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0236 DETERMINATIONS CONCERNING LINE OF DUTY/MISCONDUCT IN ACTIVE DUTY DEATH CASES

a. Modifications to Survivor Benefit Plan programs

(1) Section 642, National Defense Authorization Act (NDAA) of Fiscal Year 2002 (NDAA 2002), Public Law 107-107, modified the SBP program in two important ways: First, SBP benefits are payable to a qualified survivor when an active duty service member dies in the line of duty, regardless of whether the service member was retirement eligible at the time of death. Second, there is an increase in the calculation of the SBP annuity payable to a qualified survivor, if the active duty service member dies in the line of duty.

(2) Section 645, NDAA for Fiscal Year 2004 (NDAA 2004), Public Law 108-136, expanded the benefits and coverage of the SBP program to include benefits for surviving spouses of reserve component members not eligible for retirement who die from an injury or illness incurred or aggravated in the line of duty during inactive training.

b. Calculations of SBP annuities. SBP annuities are calculated as a percentage of the SBP base amount. Normally, the annuity is 55 percent of the SBP base amount. When an active duty death is determined to be in the line of duty, the SBP base amount is equal to retired pay as if the service member retired with total (100 percent) disability, which in turn is equal to 75 percent of the member's base pay (final or high-36 pay). Thus, for an active duty death determined to be in the line of duty, the calculation of the SBP annuity payable to a qualified survivor normally will be 55 percent of 75 percent of the deceased service member's final or high-36 pay.

c. SBP modifications in line of duty determinations. Section 642, NDAA 2002 only affects the SBP eligibility determination or annuity calculation in cases determined to be in the line of duty. For cases determined to be not in the line of duty, SBP eligibility and annuity calculations remain in effect under the rules that existed prior to Public Law 107-107. That is, if the service member was not retirement eligible at the time of death, then SBP is inapplicable. If the service member was retirement eligible at the time of death, a SBP annuity will be paid to a qualified survivor, but will not be computed on the basis of a nominal total disability retirement. Rather, the SBP base amount will be computed on the retirement for service rules that would have applied if the service member had retired at time of death.

d. Process. Line of duty determinations are now required in all active duty death cases and are made as follows:

(1) Each active duty death shall be subject to, at a minimum, a preliminary inquiry in accordance with section 0203 of this Manual. The preliminary inquiry shall be conducted by the command to which the deceased member was attached, or the gaining command for service members who die in transit. The command conducting the preliminary inquiry, or higher authority, shall decide whether the preliminary inquiry is sufficient to base a line of duty determination or whether there is need for an

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investigation. In many death cases, a preliminary inquiry, consisting of a basic letter report attached to a medical record entry or accident report, will be sufficient to base a line of duty determination.

(2) If the command completing the preliminary inquiry or investigation is not a GCMCA with an assigned judge advocate, the command will forward the inquiry/investigation to the first GCMCA in its chain of command with an assigned judge advocate. The command will include a written recommendation concerning the line of duty determination.

(3) The GCMCA with an assigned judge advocate is the cognizant official for making the formal LOD determination, subject to a limited review process described below. The GCMCA shall make the line of duty determination in accordance with the guidance in sections 0222-0227 of this Manual.

(4) Adverse determinations. Before making a determination that an active duty death was not in the line of duty, the GCMCA or his judge advocate shall afford a known potential SBP beneficiary the opportunity to review the report of investigation and provide relevant information to the GCMCA. A "known potential SBP beneficiary" is the person who would otherwise be the recognized qualified survivor if a favorable determination were made. The respective Navy and Marine Corps program managers will provide assistance for Navy and Marine Corps commands in identifying potential SBP beneficiaries. Ordinarily, the known potential SBP beneficiary shall be provided 30 calendar days from receipt of the report of investigation to provide information to the GCMCA. In an adverse determination case in which there is no known potential SBP beneficiary, the GCMCA shall make the line of duty determination following a review of the investigation by the assigned judge advocate.

(5) The LOD determination shall be made in writing by the GCMCA and forwarded to Commander, Navy Personnel Command, (PERS-62), 5720 Integrity Drive, Millington, TN 38055-6220 or Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs (MMSR-6), 3280 Russell Road, Quantico, VA 22134-5103.

(6) For adverse determination cases, the GCMCA shall forward a complete copy of the investigation to PERS-62 or MMSR-6, where it will be reviewed by CNP or DC(M&RA). CNP or DC(M&RA) shall review the LOD determination and underlying investigation. The determination of the GCMCA shall be sustained unless CNP or DC(M&RA) determine that a substantial error occurred that could materially affect the determination. In such cases, CNP or DC(M&RA) can make a different determination or return the case to the GCMCA for further investigation. The review and determination of the CNP or DC(M&RA) shall be administratively final.

0237 MAJOR INCIDENTS AND OTHER CASES INVOLVING DEATH WHERE A COURT OF INQUIRY MAY BE APPROPRIATE

a. Death cases within the definition of major incident. For death cases that fall within the definition of major incident in Appendix A-2-a, a court or board of inquiry should be convened. Additionally, and notwithstanding

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that a death case may not qualify as a major incident, a CA may conclude that a board or court of inquiry is the appropriate forum for conducting the investigation.

b. Deceased service member contributing cause to incident. If, at any time during the course of a court or board of inquiry, it appears to the investigation that the intentional acts of a deceased service member were a contributing cause to the incident, it will notify the CA. The CA will then notify OJAG (Code 13) of the preliminary findings regarding the deceased member. OJAG (Code 13) will advise the CA what additional measures, if any, are necessary to ensure a fair hearing regarding the deceased member's actions.

0238 INDEPENDENT REVIEW

a. General. To enhance the investigation process, prior to taking action on an investigative report which calls into question the propriety of a deceased individual's conduct, including all apparent suicide cases, the CA may cause the report to be reviewed by an individual not previously connected with the investigation process and outside the CA's immediate chain-of-command.

b. Qualifications of reviewer. The individual selected pursuant to this section to review the preliminary report should, to the extent feasible, possess such training, experience, and background that he can critically analyze the salient circumstances surrounding the death as documented in the report. For example, if a pilot's death occurred as the result of an aircraft accident, then the individual selected should be a pilot. If, by way of further example, an enlisted Marine's death occurred as the result of an apparent suicide, then the individual selected should be a senior noncommissioned officer or company commander. In all cases, the individual selected should have no official or personal interest in the outcome of the investigation.

c. Duties of reviewer. The individual selected to review the investigative report shall not act as the deceased's representative, but should critically analyze the investigative report from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. If, after conducting the review, the reviewer believes comment on the thoroughness of the investigation or the accuracy of its findings is warranted, then such comments shall be provided in writing to the CA. The review shall be completed within 10 working days of delivery of the report to the reviewer.

d. Action. The CA shall consider such comments as the reviewer may make and take such action as the CA deems warranted. The reviewer's comments, if any, shall be appended to the investigative report.

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0239 STANDARD OF PROOF

To find that the acts of a deceased service member may have caused harm or loss of life, including the member's own, through intentional acts, findings of fact relating to those issues must be established by clear and convincing evidence; see Appendix A-2-a for a definition of that term.

0240 SPECIAL ROUTING

a. Advance copy of death investigations. Since most death cases are of interest to headquarters activities, an advance copy of all death investigations, other than those where only a preliminary inquiry or limited investigation is required, shall be provided to the cognizant Echelon II Commander after the first endorsement. The original report shall note the forwarding of the advance copy, and each subsequent endorser shall provide an advance copy of his endorsement to the Echelon II Commander.

b. Reports available to family of deceased service members. Pursuant to 10 U.S.C. § 113 note (Pub. L. 102-484, Div. A, Title X §1072, 23 Oct 92; 106 Stat. 2508), fatality reports and records pertaining to any member of the Armed Forces who dies in the line of duty shall, generally, be made available to family members of the service member. For this reason, discretion must be exercised in enclosing graphic photographs since doing so has significant potential for shocking the sensitivities of relatives and others to whom the investigation may be released. Such materials should be enclosed separately in an envelope marked: "CAUTION. THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED."

PART G -- INVESTIGATIONS OF SPECIFIC TYPES OF INCIDENTS

0241 AIRCRAFT ACCIDENTS

a. General. Aircraft accidents are investigated by one or more investigative bodies under existing instructions and legal requirements.

(1) Mishap investigation reports. For the sole purpose of safety and accident prevention, the Chief of Naval Operations has issued special instructions for the conduct, analysis, and review of investigations of aircraft mishaps in OPNAVINST 3750.6 (series). These investigations are known as "aircraft accident safety investigations" and are conducted by mishap investigation boards. The results of those investigations are documented in Mishap Investigation Reports.

(2) JAGMAN investigations. When an aircraft mishap results in death or serious injury, extensive damage to Government property, or the possibility of a claim exists for or against the Government, a JAGMAN investigation shall be ordered to determine the cause and responsibility for the mishap, nature and extent of any injuries, description of all damage to property, and any attendant circumstances. While in most cases a claim for or against the Government may reasonably be anticipated as a result of an aircraft mishap, a command investigation will normally be used because of the command interest in

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accountability for incidents which result in death or substantial property damage. In all investigations concerning potential claims for or against the Government, a copy of the investigation shall be forwarded to the Office of the Judge Advocate General (Code 15), Tort Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989, upon completion of the CA's endorsement. Damage or injury to non-Federal property or personnel, caused by aircraft that originated from U.S. vessels is likely to involve Admiralty law aspects; consult JAGMAN Chapter XII and OJAG (Code 11). These JAGMAN investigations are in addition to, and separate from, the aircraft accident safety investigations conducted under the authority of OPNAVINST 3750.6 (series).

(3) Combat losses or damage. A JAGMAN investigation is not required for aircraft mishaps incident to direct enemy action. An aircraft mishap is incident to direct enemy action when it is due to hostile action or an unknown cause in a hostile area. Notwithstanding, a JAGMAN investigation is required when an aircraft accident or other aircraft mishap occurs in the course of a combat operation but not under hostile circumstances, such as an aircraft crash while taking off, or returning to, an airfield or aircraft carrier. JAGMAN investigations are not precluded when deemed appropriate by operational or administrative commanders. CAs may convene investigations to gather, evaluate, or verify the facts of a combat engagement when enemy action has resulted in the loss or damage to Naval aircraft, or to determine whether combat losses were sustained by "friendly fire."

(4) This subsection relates to JAGMAN investigations only and does not affect any other reporting requirement, such as casualty and damage reports required under Article 0831, U.S. Navy Regulations (1990).

b. Relationship between JAGMAN investigations and aircraft accident safety investigations

(1) A JAGMAN investigation of an aircraft accident or mishap is a collateral investigation, as referred to in the joint directive issued under OPNAVINST 3750.16 (series), which implements section 702 of the Federal Aviation Act of 1958, 49 U.S.C. § 1442. OPNAVINST 3750.16 (series) provides specific direction concerning coordination of investigations of aircraft accidents between military authorities and the National Transportation Safety Board (NTSB) and the Federal Aviation Administration (FAA). Due to the separate purposes and procedures of JAGMAN investigations, military mishap investigations, and FAA or NTSB investigations, there are specific limitations and restrictions regarding the integration of these investigations, use of evidence obtained, including witness statements, and the use and disclosure of the respective reports. OPNAVINST 3750.16 (series), OPNAVINST 3750.6 (series), and Marine Corps Order (MCO) 3750.1 provide detailed guidance regarding the restrictions on the use of these investigations and the permissible extent of integration between JAGMAN investigations and aircraft mishap investigations. The relationship between the JAGMAN investigation and aircraft safety investigations should be thoroughly understood by all persons involved with investigating any aircraft accident or mishap.

(2) Statements gathered in the course of aircraft accident safety investigations are privileged. This means that when the source of that information has been given a promise of confidentiality, that statement, made before the promising safety board, cannot be used for any purpose other than

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accident prevention. OPNAVINST 3750.6 (series) also gives a promise of confidentiality to those conducting the aircraft accident safety investigation. This means that their opinions, analyses, and conclusions cannot be used for purposes other than accident prevention. In conducting the JAGMAN investigation, care shall be exercised to respect the privileged character of the aircraft accident safety investigation. No witness shall be questioned regarding participation in an aircraft safety investigation.

(3) Although membership on an aircraft safety investigation board does not bar an individual from being a witness for a JAGMAN investigation of the same incident, such dual participation is undesirable and should be avoided due to the possibility of undermining the promise of confidentiality crucial to the conduct of safety investigations.

(4) Investigating officers of the aircraft safety investigation and JAGMAN investigation shall have access to all real evidence and have separate opportunities to question and obtain statements from all witnesses. JAGMAN investigating officers shall not sit in on interviews conducted by the aircraft accident safety investigation.

(5) If a possibility exists that witnesses will testify before both investigative bodies, the JAGMAN investigating officers shall explain to such witnesses the reasons for the apparent duplication of effort. This is particularly important with non-military witnesses. The explanation shall cover:

(a) the different objectives of the two investigations;

(b) the reasons why procedures vary;

(c) the need to preserve the privileged nature of the aircraft accident safety investigation; and

(d) the fact that since neither command nor administrative action may alter the privileged character of statements provided to the aircraft accident safety investigation, such statements will not be available to the JAGMAN investigation from any official source.

c. Class A aircraft accident JAGMAN investigations

(1) Designation of Class A Aircraft Accidents. As soon as practical, but in no case more than 60 days after the occurrence of an aircraft accident involving an aircraft of the DON, the authority responsible for convening the investigation under this Manual shall determine whether the mishap is a Class A accident. See Appendix A-2-a for the definition of "Class A aircraft accident." If the accident meets the criteria for a Class A aircraft accident, the convening order for the investigation shall contain the following: "This [Command Investigation] [Litigation-Report Investigation] [Board of Inquiry] [Court of Inquiry] is convened to investigate the circumstances surrounding a Class A aircraft accident in compliance with 10 U.S.C. § 2255."

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(2) Member Qualifications for Class A Aircraft Accident JAGMAN Investigations. Federal law establishes specific qualifications for members conducting Class A aircraft accident investigations. These qualifications apply to any Class A aircraft accident investigation under sections 0208, 0209, or 0210 of this Manual, convened on or after March 24, 1997; see 10 U.S.C. § 2255.

(a) Multiple Member Investigations. A multiple member Class A aircraft accident JAGMAN investigation shall have:

1. a majority of its members selected from units other than the mishap unit or a unit subordinate to the mishap unit, as defined in Appendix A-2-a; and

2. at least one member who is a member of the Armed Forces or an officer or employee of the DoD who possesses knowledge and expertise relevant to aircraft accident investigations, for example, a graduate of a Naval Aviation Safety Officer/Command course, or previous service on an aviation mishap safety or aircraft accident JAGMAN investigation, or previous assignment as a squadron Aviation Safety Officer.

(b) Single Member Investigations. A single member Class A aircraft accident JAGMAN investigation shall be:

1. selected from a unit other than the mishap unit or a unit subordinate to the mishap unit, as defined in Appendix A-2-a; and

2. directed to consult with a member of the armed forces or an officer or employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft mishap investigations, for example, a graduate of a Naval Aviation Safety Officer/Command course, or previous service on an aviation mishap safety or aircraft accident JAGMAN investigation, or previous assignment as a squadron Aviation Safety Officer.

(c) Exceptions to Statutory Qualifications

1. Waiver Criteria. The Secretary of the Navy may waive the statutory qualifications set forth in sections 0242c(2)(a) and (b), above, if the Secretary determines:

a. It is not practicable to meet the requirement because of

(1) the remote location of the aircraft mishap;

(2) an urgent need to promptly begin the investigation; or

(3) a lack of available personnel outside of the mishap unit who have adequate knowledge and expertise regarding the type of aircraft involved in the mishap; and

b. The objectivity and independence of the aircraft mishap investigation will not be compromised.

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2. Procedure for Obtaining a Waiver. Requests for a waiver shall be addressed to the Secretary of the Navy, via the chain of command, and contain a detailed explanation of the particular criteria listed in subsection (a) justifying the need for a waiver.

3. Congressional Notification. The Secretary of the Navy must notify Congress of a waiver granted under this section and the reasons therefore.

d. Required facts and opinions. The scope of the investigation function varies with the nature and circumstances of the particular incident. The report of the investigation should include, but not be limited to, data relevant to the purpose of the investigation on the following matters:

(1) Identity of the pilot(s), co-pilot(s)/naval flight officer(s) (NFO), air crew and any passengers, including the background, history, training, and experience of the pilot, co-pilot/NFO and air crew and their familiarity with the type of aircraft involved.

(2) The military or civilian status of all personnel aboard, e.g., Regular, Reserve, or retired; active duty, inactive duty, inactive duty training; Temporary Additional Duty (TAD), Temporary Duty (TDY), leave, liberty; and so forth.

(3) Type, model, and bureau number of the aircraft involved.

(4) Identification of the squadron, detachment, or unit authorizing the flight and the official who authorized the flight.

(5) If a privately-owned or rented aircraft was involved, identify the owner, authorization for the flight, existence of private insurance, and extent of coverage.

(6) The identity of all individuals who were killed, injured, or who suffered property damage as a result of the mishap, including name, age, address (home and work), telephone number, occupation, and a complete description of how their injuries occurred; see Part F for special considerations in death cases.

(7) Sociological, psychological, and human factors related to the accident, including potential stress factors, fatigue, use of medication, or intoxication.

(8) Type, duration, and purpose of the flight, briefing of the pilot, and other pertinent information regarding the particular flight, including the use of night vision goggles or other mission-specific factors relevant to aircraft or air crew equipment or performance.

(9) Weather conditions throughout the flight.

(10) Preflight history of the aircraft, compliance or noncompliance with pertinent technical directives, including flight hours since the last overhaul, discrepancies noted on recent "yellow sheets" (OPNAV Form 3760/2, OPNAVINST 3710.7 (series)), VIDS/MAF forms (OPNAV 4790/60, OPNAVINST 4790.2

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(series)), and flight hours since the last intermediate check.

(11) Description of flight path and maneuvers of the aircraft during flight, including manner of descent and impact.

(12) Positions of external control surfaces, landing gear, canopy, and other relevant parts of the aircraft, during the flight.

(13) Presence, condition, and use of safety, communication, escape, and survival equipment.

(14) Post-accident assessment of the aircraft and detailed description of all damage to the aircraft, including wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces.

(15) Assessment of the scene of the accident including its precise location, a description of the terrain, and a complete listing and cost of damaged or destroyed Government and non-Government property.

(16) Description of rescue operations employed, their effectiveness, and any difficulties encountered.

(17) Instructions in effect at the time of the accident concerning procedures relating to the particular flight, including applicable local and regional flight rules governing the flight and copies of air charts in effect and in use.

(18) Performance data on the aircraft in question under prevailing wind, weather, and temperature.

(19) In the case of deaths caused by the accident, the precise medical cause of death, substantiated by medical records, autopsy, and death certificate.

(20) Cause, nature, and extent of any injuries suffered as a result of the accident as substantiated by medical records, including line of duty/misconduct determinations for injuries to Naval personnel, if required.

(21) Involvement of other aircraft, if any.

(22) Roles of supervisory, support, and controlling personnel.

(23) When the evidence concerning the accident is sufficient to do so, an opinion or opinions as to the cause or causes of the accident.

(24) When the evidence is not sufficient to form an opinion or opinions as to the cause or causes of the accident, a description of those factors, if any, which in the opinion of the investigator(s) substantially contributed to the accident.

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0242 MOTOR VEHICLE ACCIDENTS

a. General. All but the most minor of accidents involving Government vehicles and personally-owned vehicles must be investigated. Accidents involving $5,000 or less of property damage or minor personnel injuries can, however, be adequately documented by completion of Standard Form 91 (Police Accident Form) alone. More serious accidents may be investigated by either a command investigation or by a litigation-report investigation if a claim is expected for or against the Government. See JAGINST 5890.1 (series) for further information on claims. Chapter 6 of OPNAVINST 5102.1 (series) provides reporting procedures under the Navy's Mishap Investigation and Reporting System which may require an additional investigation.

b. Basic investigating requirements. When conducting an investigation into a motor vehicle accident, physically observe the damage to property and survey the accident scene whenever practical. Include photographs, if possible. Document injuries and damage by attaching the best available evidence including relevant medical records and actual bills or receipts. A copy of any investigation concerning potential claims for or against the Government must be forwarded to OJAG (Code 15), TCU, upon completion of the CA's endorsement.

c. Required facts and opinions. The following facts shall be included in all command investigations and litigation reports. The following opinions will be included in command investigations but will only be included in litigation reports if directed by the supervising judge advocate:

(1) Vehicle(s) completely identified, including vehicle identification number, license plate number, model, year, and color.

(2) Identity of driver(s) and owner(s), including name, age, addresses (home and work), and telephone numbers. For military members, indicate their military status at the time of the accident, e.g., active duty, TAD, leave, liberty, etc., their grade/rank, and the name, address, location and Unit Identification Code (UIC) of their unit. If an individual died or is incapacitated as a result of the accident, provide similar identifying information for the next-of-kin or legal representative. See section 0252 regarding special findings of fact required when an accident involves reservists coming to or from periods of active duty or training. If a Government vehicle was involved, identify the unit to which the vehicle was assigned, the individual at that unit who authorized use of the vehicle, and its authorized purpose.

(3) Time of the accident, light and weather conditions, and their effect on driving conditions.

(4) The location of the accident, e.g., highway number, direction of travel, milepost number, street name, intersection, road and terrain factors, including road characteristics, obstructions to the driver's vision, traffic signals, and signs.

(5) Estimated speed of vehicle(s) involved as evidenced by witnesses, skid marks, condition of roads, and damages to the vehicles or other property.

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(6) Actions of other vehicles involved in the accident, including any part played by them in creating the conditions that resulted in the accident.

(7) Traffic conditions at the scene and their effect on the accident.

(8) Traffic laws and regulations in force pertinent to the accident, including traffic safety devices, signs, and markings, e.g., school zone, no passing zone, railroad crossing, reduced speed limit, and any requirement to use safety devices installed in the vehicles, e.g., seat belts, child carriers. A copy of the statute, ordinance, or regulation should be made an enclosure. Consult the cognizant judge advocate or local Region Legal Service Office (RLSO).

(9) Mechanical condition of the vehicles. If a mechanical defect or condition, e.g., faulty or worn brakes/tires, is determined to have contributed to the accident, include the relevant maintenance history of the vehicle.

(10) Physical condition of the driver, or drivers, including intoxication, fatigue, use of medications or drugs, or other medical condition. The factual portion of the report should include such matters as the number of hours of sleep prior to the accident, the number of hours worked, the amount of alcohol consumed, results of any blood alcohol or other test for intoxication, any medications or drugs taken prior to the accident and the time elapsed between their last use and the accident, and any unusual stress or abnormal condition that might have affected the driver's alertness. The opinion section should address any reasonable inferences that may be drawn from these facts relevant to the cause of the accident.

(11) Driving experience of the driver or drivers, both generally and in the type of vehicles being driven, including the state which licensed the driver(s) and any previous loss of driving privileges and driving-related convictions, e.g., reckless driving, drunk driving, driving without insurance.

(12) Safety devices installed and whether they were being used at the time of the accident.

(13) Conduct of passenger(s). Opinions may include reasonable inferences on the effect of any passenger's conduct on the driver(s).

(14) Facts and opinions relevant to knowledge by any passenger of any impairment of the driver at the time the passenger entered or had a reasonable opportunity to leave the vehicle.

(15) Damage to vehicles fully described, including photos if available, and repair costs.

(16) Damage to other property, including photos if available, and repair costs.

(17) Nature and extent of personal injuries and medical costs, documented by relevant medical records, bills, and receipts. If death resulted from the accident, indicate the cause of death and include a copy of the death certificate and any autopsy reports as enclosures. Include the

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facts and opinions required under section 0250e(5), Claims For Or Against the Government/Dual Purpose Investigations, relevant to personal injuries.

(18) Name, age, address, and telephone number of any witnesses to the accident, a description of their location in relation to the accident scene, their ability to observe from that location, and what they saw.

(19) The name, address, and telephone number of any law enforcement official who investigated the accident. A copy of any law enforcement or police report made concerning the accident should be included as an enclosure and the custodian of the original report should be indicated.

(20) Any civilian or military criminal charges brought as a result of the accident and the ultimate resolution of those charges. Do not delay the report of investigation solely to document the outcome of criminal charges. The CA should forward that information to subsequent endorsers and to the copy-to addressees as it becomes available.

(21) If a private vehicle is involved in the accident, the name, address, policy number, and telephone number of any insurer of the vehicle, including the amount and type of insurance carried and those categories of drivers who are covered by the policy.

(22) An opinion regarding the probable cause of the accident. If the evidence is insufficient to establish probable cause, those factors which in the opinion of the investigating officer contributed to the accident should be listed.

(23) An opinion regarding the contributory or comparative negligence of any party, if any. Consult with OJAG (Code 15), TCU, or the cognizant judge advocate for guidance pertaining to the relevant standard and its application.

(24) If not included in the facts relevant to military or criminal charges filed, an opinion concerning any laws, articles of the UCMJ, or regulations violated.

(25) Whether or not the vehicles are economically repairable, and if not, their salvage value.

(26) Whether or not the driver, in case of Government vehicle, was acting within the scope of employment pursuant to state law, and whether injuries sustained by military members were incurred in the line of duty or as a result of misconduct; see Part E.

d. Motor vehicle accidents involving a Government vehicle almost always involve the potential for claims for or against the Government. In such cases, refer to section 0250(e) and include all the facts and opinions required by that section.

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e. Recommendations

(1) Whether or not disciplinary action should be taken against any of the parties involved. If disciplinary action has been taken, indicate the result, documented by enclosure. Nonpunitive letters of caution are private in nature and the issuance of such letters should not be addressed in the investigation, nor should copies of such letters be made enclosures to the investigation. If disciplinary action is recommended, but has not been initiated, include as an enclosure a charge sheet with draft specifications. Draft specifications should not be preferred, however, since doing so starts the "speedy trial clock." Consult with the cognizant judge advocate or RLSO.

(2) If Government property has been damaged, a recommendation as to the disposition of the property as follows:

(a) Repaired and returned to service.

(b) Dropped from the records.

(3) Whether the Government should initiate a claim to recover losses suffered by the Government due to damage to property or injuries to personnel, if any.

(4) Pertinent recommendations on matters of safety procedures.

0243 ACCIDENTS ABOARD SHIPS OR SUBMARINES (GENERALLY)

a. General

(1) Command investigations are normally sufficient to document most shipboard accidents that require more than a preliminary inquiry. Major incidents involving greater losses of life, personal injuries, or property damage will normally be investigated by a court of inquiry. Accidents aboard ships, particularly those involving damage caused by other ships, watercraft, or cargo handling equipment, or injuries to dock workers, shipyard employees, longshoremen, or ship's visitors are likely to involve Admiralty Law aspects and should be the subject of a litigation-report investigation. Consult Chapter XII of this Manual and OJAG (Code 11), the cognizant judge advocate, or local RLSO.

(2) Mishap investigation reports. For the sole purpose of safety and mishap prevention, the Chief of Naval Operations has issued special instructions in Chapter A6 of OPNAVINST 5100.19 (series) for the conduct, analysis, and review of investigations of mishaps that occur aboard ships or submarines. These investigations are conducted by mishap investigation boards appointed for that purpose and the results are documented in mishap investigation reports.

(3) JAGMAN investigations. When an afloat mishap results in death or serious injury, extensive damage to Government property, or the possibility exists that a claim may be filed by or against the Government, a JAGMAN investigation shall be appointed to investigate and determine the cause and responsibility for the mishap, nature and extent of any injuries, description

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of all damage to property, and any and all attendant circumstances. These JAGMAN investigations are in addition to, and separate from, the mishap investigation boards appointed under the provisions of OPNAVINST 5100.19 (series).

(4) Combat losses or damage. A JAGMAN investigation is not required for damages to property or injuries to personnel that are incident to direct enemy action. Damage to property or injuries to personnel are incident to enemy action when the mishap results from hostile action or an unknown cause in a hostile area. Nonetheless, a JAGMAN investigation is required when the damage or injury occurs in the course of combat operations which are not subject to hostile circumstances, e.g., a collision at sea which occurs when the vessels involved are not engaged in action with enemy forces. Commanders may, in their discretion, convene JAGMAN investigations to gather, evaluate, or verify the facts of a combat engagement when enemy action has resulted in the loss or damage to Naval ships or submarines, or to determine whether combat losses were sustained by "friendly fire." This subsection relates only to JAGMAN investigations and does not affect any other reporting requirements, such as reports required under article 0831, U.S. Navy Regulations (1990).

b. Relationship between JAGMAN investigations and safety investigations

(1) The JAGMAN investigation of an afloat mishap is a collateral investigation and is conducted separately and independently from the afloat safety investigation. Due to the separate purposes and procedures of each of these investigations, there are specific limitations and restrictions regarding the integration of JAGMAN investigations with other safety investigations, use of the evidence gathered, including witness statements, by these other investigations, and use and disclosure of those reports. OPNAVINST 5100.19 (series) provides detailed guidance regarding restrictions on the use of these investigations and the permissible extent of integration between the JAGMAN investigation and safety investigations. The relationship between a JAGMAN investigation and a safety investigation should be thoroughly understood by all persons involved in investigating any afloat accident or mishap.

(2) Statements gathered in the course of an afloat safety investigation are privileged, meaning that when the source of that information has been given a promise of confidentiality, that statement, made before the mishap investigation board which made the promise, cannot be used for any purpose other than mishap prevention. OPNAVINST 5100.19 (series) also gives a promise of confidentiality to those individuals appointed to conduct the afloat safety investigation, meaning that their opinions, analyses, and conclusions cannot be used for purposes other than mishap prevention. In conducting a JAGMAN investigation, care shall be exercised to respect the privileged character of the afloat safety investigation. No witness shall be questioned as to participation in an afloat safety investigation.

(3) Although membership on an afloat mishap investigation board does not bar an individual from being a witness for a JAGMAN investigation of the same incident, participation of mishap board members as witnesses for the JAGMAN investigation should be avoided due to the possibility of undermining the promise of confidentiality crucial to the conduct of safety investigations.

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(4) Members of a mishap investigation board and JAGMAN investigating officers shall have access to all real evidence and have separate opportunities to question and obtain statements from all witnesses. JAGMAN investigating officers shall not sit in on interviews conducted by the mishap investigation board.

(5) If a possibility exists that a witness or witnesses will provide information to the mishap investigation board and to the JAGMAN investigating officers, the JAGMAN investigating officers shall explain to such witnesses why the apparent duplication of effort is necessary. The explanation shall cover:

(a) the different objectives of the two investigations;

(b) the reasons why the procedures for each investigation vary;

(c) the necessity for respecting and preserving the privileged character of the mishap investigating board; and

(d) the fact that statements obtained by the mishap investigation board will not be available to the JAGMAN investigating officers from any official source because neither command nor administrative action may alter the privileged character of the statements provided to the mishap investigation board.

0244 EXPLOSIONS

a. Required facts and opinions. Criminal law enforcement investigations are required for any fire or explosion of unknown origin affecting DON property or property under Navy/Marine Corps control. Any such investigation shall be coordinated with NCIS; see section 0202. An investigation involving an explosion should document the type of explosion, the cause of the explosion, the extent and nature of personnel injuries, the nature and extent of loss or damage to property, the estimated dollar amount of the loss or damage of the property, the estimated cost of medical treatment of non-military personnel injured by the explosion, the person(s) (if any) responsible for the explosion, and all other pertinent facts and circumstances. Command investigations are normally used to document nonlethal explosions, or where property damage is minor. If the explosion caused great loss of life or property damage associated with a major incident, a court of inquiry will normally be used.

(1) The following information shall be included in the report:

(a) Date, time, and location of the explosion, use compartment name or number if applicable;

(b) Type of explosion;

(c) Kind and quantity of the materials, gases, etc. that were involved;

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(d) Measurable time intervals, if any, between explosions;

(e) Existence of barricades and protective gear and the effect of the explosion on them;

(f) Existence of any natural obstructions such as a hill, forest, or other object intervening between the site of the explosion and the areas affected;

(g) Description of any loss or damage to Government and private property and estimated dollar amount needed to replace or repair the loss or damage;

(h) Range and extent of damage as indicated by maps or photographs showing the following:

1. Radius of complete destruction;

2. Radius of structural damage beyond economical repair;

3. Radius of repairable structural damage;

4. Radius of general glass breakage;

5. Distances that significant missiles were projected, including kind and weight;

6. Distance between locations, if explosions occurred at more than one location; and

7. Distance between ships and other vessels or structures affected and distances to nearby ships or structures not affected.

(i) Approximate shape and dimensions of crater, if any, including depth and kind;

(j) Weather and atmospheric conditions and their effect on shock waves;

(k) Personnel involved and the extent of their involvement, their qualifications in terms of the Personnel Qualification Standards (PQS) System or other required safety qualifications, the level of training of the personnel involved, and whether the level of training met required standards;

(l) Identity of personnel injured or killed, with full description of injuries supported by medical records and autopsy reports, as required; see Part F for special considerations in death cases;

(m) Description of the safety precautions or operating procedures that were in effect at the time of the explosion and whether they were observed or violated; and

(n) Opinions on the probable cause(s) of the explosion.

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(2) An environmental assessment of the damage caused by the explosion may be necessary, particularly if there is evidence of chemical contamination of the surrounding area; consult the cognizant judge advocate or local RLSO.

b. Other reports. Ashore explosive mishaps involving conventional ordnance are also reported under the separate procedures established in Chapter 5 of OPNAVINST 5102.1 (series). Afloat explosive mishaps are also reported under the separate procedures established in Chapter A6 of OPNAVINST 5100.19 (series).

0245 STRANDING OF A SHIP OF THE NAVY

a. General. An investigation involving the stranding of a ship shall include all pertinent logs, charts, orders, regulations, condition of the sea and weather, rate and direction of the tidal stream, time of the tide, and other factors involving natural elements. Additionally, any mechanical or electronic deficiency or failure in the ship pertinent to the stranding shall be investigated and reported. The investigation shall ascertain the cause and responsibility for the stranding and resulting damage. The stranding of a Navy ship, unless only insignificant damage results, is usually a major incident. A court of inquiry will normally be convened unless the preliminary inquiry indicates that a command investigation will be sufficient to establish the facts. These incidents may also involve Admiralty Law aspects; consult Chapter XII of this Manual and OJAG (Code 11), the cognizant judge advocate, or local RLSO.

b. Determination of ship's position. The investigation shall determine whether the proper chart provided by DON was used, whether the position of the ship at the last favorable opportunity to avoid the casualty was accurately determined and, if not, when it was last accurately ascertained. To enable the investigative body to fix the true position of the ship at the time of her grounding, an officer not attached to the ship involved may be directed to ascertain the position of the ship from the data available.

c. Navigation in pilot waters. If land was sighted and the distance estimated before the ship struck, steps taken during the time land was in sight to correct the ship's course and speed will be reported. The extent to which applicable instructions, e.g., those contained in Coast Pilot or Sailing Directions, were observed should be noted.

d. Other reports. Strandings are also reported under the separate procedures in Chapter A6 of OPNAVINST 5100.19 (series).

0246 COLLISION AND ALLISION INCIDENTS

a. General. All vessel collisions and allisions, a vessel and fixed object, are admiralty incidents. Consult Chapter XII of this Manual and OJAG (Code 11) for required investigations and guidance.

b. Other reports. Collisions are also reported under the separate provisions in Chapter A6 of OPNAVINST 5100.19 (series).

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0247 ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP

a. General. If the investigated mishap is a flooding, the first determination to be made is whether the flooding is significant enough to document. Generally, flooding is considered significant when one or more of the followings conditions exist: damage is caused to major/vital equipment; origin of the flooding is suspicious; flooding delays deployment, causes significant change in operating schedule, or degrades mission capability; Naval personnel were responsible for the flooding; defective naval design, specifications, or installation may have caused the flooding; or unsound operating doctrine or procedures caused or contributed to the flooding. Command investigations are normally used to document flooding.

b. Required facts and opinions. The following information shall be included in the report of investigation into flooding:

(1) Date, time, and location of the flooding by compartment name or number;

(2) Source and type of flooding, e.g., salt or fresh water, oil, JP-5;

(3) How the flooding was detected;

(4) Type of de-watering equipment that was used and its effectiveness;

(5) Draft forward and aft and list of ship, before and after damage. Drafts may have to be estimated from drafts recorded on departure from last port and on arrival in port after damage;

(6) General distribution and amount of variable weights, particularly fuel and water, before damage;

(7) Compartments flooded and the rate of flooding for each one, including time when:

(a) flooding started;

(b) flooding detected;

(c) time General Quarters sounded, or duty emergency repair party was called away;

(d) flooding was stopped or brought under control; and

(e) de-watering was completed;

(8) Description of the physical effects of the flooding and the extent of damage to hull, machinery, equipment, electronics, supplies, cargo, etc., including photographs, or diagrams to document the range and extent of damage;

(9) Date of last inspection of the involved spaces with any noted discrepancies;

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(10) Ship's location at sea or in port;

(11) Ship's condition of readiness;

(12) Effect on the ship's ability to carry out its mission;

(13) Summary of the steps taken to control damage and to correct the list, trim, or depth;

(14) Performance of installations such as flood control, automatic door, and hatch closures;

(15) Estimated dollar amount of damage or repairs required, including damage to personal property which may result in a claim against the Government;

(16) Opinion on the probable cause of the flooding, including the cause of progressive flooding of other compartments, e.g., material condition of readiness violated, failure of structure, deficiency of structure; and

(17) Opinion on whether the occurrence of a similar type of flooding is possible on another ship.

0248 FIRES

a. General. If the investigated mishap is a fire of unknown origin affecting DON personnel or property under Navy/Marine Corps control, any investigation shall be coordinated with NCIS; see sections 0202(d) and 0233(b). The next, determination to be made is whether the fire is significant enough to document. Generally, a fire is considered significant when one or more of the following conditions exist: damage is caused to major/vital equipment; origin of the fire is suspicious; fire delays deployments, causes significant change in operating schedule, or degradation of mission capability; Naval personnel were responsible for the fire; defective naval design, specifications, or installation may have caused the fire; or unsound operating doctrine or procedures caused or contributed to the fire. Command investigations are normally used to document fires, unless the damage to property or loss of life involved rises to the level of a major incident. Fires in quarters ashore should normally be investigated by a litigation-report investigation since claims are usually involved.

b. Required facts and opinions. The following information shall be included in the report of investigation of fires:

(1) Date, time, and location of the fire, use compartment name or number if applicable;

(2) Class of fire;

(3) Method by which fire was detected;

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(4) Time when:

(a) fire started (detected);

(b) fire was reported;

(c) General Quarters sounded, or fire party was called away;

(d) fire located;

(e) fire-fighting started;

(f) reflash watch was set;

(g) boundaries were set; and

(h) fire was extinguished.

(5) Type of fire-fighting organization that was used, e.g., duty section fire party, Condition One fire and repair party, base firefighters, civilian fire department;

(6) Number of personnel who responded to the fire, their level of fire-fighting and damage control training;

(7) Effectiveness of fire/repair locker organization, maintenance of organization charts, and leadership;

(8) Effectiveness of installed damage control systems and equipment;

(9) Type of extinguishing agent used and its effectiveness;

(10) Availability and operability of extinguishing equipment;

(11) System of communications that was used and any difficulties in communication;

(12) Description of the physical effects of the fire; radii of losses and damage with respect to fire, smoke, and water; extent of the spread of the fire, including maps, photographs, or diagrams to document the range and extent of the damage;

(13) Date of last inspection of the involved spaces with any noted discrepancies;

(14) Ship's location at sea or in port;

(15) Ship's condition of readiness;

(16) Effect of the fire on the ship's ability to carry out its mission;

(17) Estimated dollar amount of damage or repairs required, including damage to personal property which may result in a claim against the

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Government;

(18) Identity of personnel that were injured or killed, with full description of injuries, medical records, autopsy reports, as required; see Part F for special considerations in death cases;

(19) Opinion on the cause of fire and the factors that contributed to the spread of the fire; and

(20) Opinion on whether the occurrence of a similar type of fire is possible on another ship.

0249 LOSS OR EXCESS OF GOVERNMENT FUNDS OR PROPERTY

a. General. Article 0814, U.S. Navy Regulations (1990), requires commanding officers to recommend or convene an investigation under the provisions of the JAGMAN into the circumstances of all deficits (losses) or excesses of public funds or property in the custody of persons under their command, unless properly excused by higher authority. A command investigation is usually sufficient for this purpose. The following general provisions are pertinent:

(1) To verify the existence and amount of a deficit or excess, a prompt audit (preliminary inquiry) of funds or property records normally should precede the decision to convene a JAGMAN investigation. Consultation with an appropriate assist team is encouraged prior to convening a JAGMAN investigation.

(2) A JAGMAN investigation may be required even if the custodian of funds or property is not an accountable person, as defined in Department of Defense Financial Management Regulation, DOD 7000.14-R, Volume 5, Disbursing Policy and Procedures.

(3) A JAGMAN investigation may be a prerequisite, under section 0167, to setoff against pay for losses by nonaccountable personnel, and is the primary source of information in determining whether or not relief of liability may be granted to the custodian in cases of lost funds in amounts of $750.00 or more.

(4) Criminal law enforcement investigations are required if there is any indication that the loss or excess was caused by fraud, embezzlement, theft, or other criminal act. Any such investigation should be coordinated with NCIS; see section 0202. Whether or not a criminal investigation is conducted, inventory records must be corrected with a supporting survey, Financial Liability Investigation of Property Loss (DD Form 200). Losses or excesses of Government funds shall be investigated and reported either by JAGMAN investigation or by the procedures established in DOD 7000.14-R, Volume 5.

(5) Commanders or reviewing authorities should consider conducting a preliminary inquiry when recurring losses or excesses indicate carelessness in handling public funds or property, and regular management reviews and reports are not considered adequate to remedy the situation. A JAGMAN investigation

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may be appropriate even though each loss or excess, by itself, would not normally require one. Navy publications applicable to the type of funds or property involved, e.g., NAVSUP P-486 for provisions afloat, or P-487 for ships' stores, should be consulted for those amounts of losses or excesses that are considered normal for the volume of business conducted, and for those amounts that warrant further investigation.

(6) For losses or excesses of property, not funds, the procedures for Financial Liability Investigation of Property Loss (DD Form 200) meet the requirements for an investigation in most situations. The original report will be forwarded in accordance with survey regulations, and a duplicate original will be forwarded as set out in subsection h.

(7) When the cause of loss or excess in the funds or property of a financially accountable custodian cannot be determined, negligence on the part of the custodian is normally presumed by the relief authority when considering requests for relief of liability.

(8) Other than section 0167, there is no authorization to collect the value of lost government property from nonaccountable personnel, even when caused by fault or negligence. Disciplinary action, however, may be taken, if appropriate, based on investigation findings of culpability.

b. Specific guidance

(1) Public funds. JAGMAN investigations are required for all losses or excesses of public funds, except as follows:

(a) When a loss of disbursing funds is voluntarily liquidated by the custodian under applicable provisions;

(b) When the loss or excess is less than $750.00 in a single incident or related series of incidents; or

(c) When routine accounting adjustments to accounts are appropriate to reflect a discrepancy in money on hand.

(2) Public property. A Financial Liability Officer (formerly called a Survey Officer) or Financial Liability Board (formerly a Survey Board) must inquire into, and report on, all losses or excesses of public property, unless an adjustment to accountable records is otherwise authorized by Naval Supply System Command regulations.

(a) JAGMAN investigations are not generally required for those losses or excesses for which a Financial Liability Investigation of Property Loss (survey) is not mandated by Naval Supply Systems Command regulations. This includes such actions as food service "losses without survey," ship's store "non-disproportionate losses or gains," supply stock or other property book material losses or excesses which are below survey thresholds, or when other routine accounting adjustments to property accounts or inventories are appropriate to reflect a discrepancy in the property on hand. Repetitive minor losses, however, which are indicative of negligence may warrant an investigation as discussed in subsection a(5) above. Furthermore, a JAGMAN investigation may be directed by higher authority in the chain of command or

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by Commander, Naval Supply Systems Command.

(b) To ensure independent investigation, the officer having custody of the property lost or in excess should not be designated the Financial Liability Officer to conduct the survey.

(3) Postal funds or property. Postal funds are not public funds. Investigations into loss or excess of postal funds or property, therefore, are not required by Article 0814, U.S. Navy Regulations (1990). OPNAVINST 5112.6 (series), however, requires a commanding officer to convene an investigation into any "postal offense" listed in Volume I of the DoD Postal Manual, DoD 4525.6-M. Even where no offense is involved, a commanding officer should consider convening an investigation into any postal loss in which an accountable Naval postal clerk or officer has not made voluntary restitution. Such an investigation may be needed by the Postal Service for action on a request for relief of liability by the accountable individual.

(4) Nonappropriated funds or property. Nonappropriated funds are not public funds. Whether to convene an investigation under this Manual into losses or excesses of nonappropriated funds or nonappropriated fund property is in the discretion of the commanding officer or higher authority. In dealing with losses or excesses of "nonappropriated fund activities," however, it is important to note that some receive partial appropriated fund support. Losses or excesses of appropriated funds and appropriated fund property in the hands of nonappropriated fund activities must be investigated under subsections b(1) and b(2) above.

c. Primary references for processing losses or excesses of Government property. Primary references for processing losses or excesses of Government funds and property include:

(1) Department of Defense Financial Management Regulation, DOD 7000.14-R, Volume 5, Disbursing Policy and Procedures;

(2) Department of Defense Manual, DOD 7200.10-M, Accounting and Reporting for Government Property Lost, Damaged or Destroyed;

(3) Naval Supply Systems Command Manual, Volume II, Supply Ashore;

(4) Naval Supply Systems Command Publication 485, Afloat Supply Procedures;

(5) Naval Supply Systems Command Publication 486, Volume I, Food Service Management - General Messes;

(6) Naval Supply Systems Command Publication 487, Ships Store Afloat; and

(7) Marine Corps Order (MCO) P4400.150 (series), Consumer Level Supply Policy Manual.

d. Type of investigation. At the conclusion of the preliminary inquiry, the commander must determine which of the investigatory options listed in section 0204 to exercise. Where disciplinary action may be a consideration,

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see section 0217. For losses of property, the commander may use a survey procedure under applicable Navy or Marine Corps regulations in lieu of an administrative investigation under this Manual. Original reports of survey generated by such bodies shall be forwarded as specified in the regulations under which they are convened. A duplicate original shall be forwarded in the same manner as reports of investigation under section 0218 and section 0249 below. This provision does not limit a commander's discretion to convene another type of investigation under this Manual in addition to a survey procedure. Regardless of the type of investigation convened, coordination with concurrent investigators from other DON organizations or other Federal agencies may be required under section 0202.

e. Loss investigations: special notice to individuals affected. In any investigation into a loss of funds or property in the custody of an accountable individual, or for the purpose of making an administrative determination of accountability under section 0167, the accountable individual(s) shall, in addition to other warnings and advisements required by law or regulation, be advised of the following:

(1) The investigation extends to all facts relating to the loss, its causes, its dollar value, and the kinds and degrees of individual responsibility for the loss.

(2) The findings of the investigation may be a basis for any of the following actions that are applicable to the loss:

(a) Determination of financial liability of the accountable individual for loss of property or funds derived from sale of property by the Commander, Naval Supply Systems Command, Chief, Bureau of Medicine and Surgery, or Deputy Chief of Staff for Installations and Logistics, U.S. Marine Corps, as appropriate, under 31 U.S.C. § 3531;

(b) Determination whether relief of liability will be granted for physical loss or improper payment of disbursing funds or documents, upon request of the accountable individual, by the Secretary of the Navy or the Comptroller General, under 31 U.S.C. § 3527;

(c) Determination by the commander to hold a non-accountable individual liable for the loss under section 0167.

(3) In loss of funds cases, negligence of the accountable individual may be presumed by the Secretary of the Navy or the Comptroller General if the loss remains unexplained.

(4) The affected individual may present evidence for the consideration of the investigating officer(s). The investigating officers may, however, refuse to accept evidence that is irrelevant, lacking in probative value, unduly voluminous, or whose inclusion would unduly delay the investigation.

(5) An accountable individual may request to liquidate voluntarily a loss of disbursing funds under the applicable provisions of Department of Defense Financial Management Regulation, DOD 7000.14-R, Volume 5, Disbursing Policy and Procedures.

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f. Required facts and opinions. Chapter 6, section 0607, Department of Defense Financial Management Regulation, DOD 7000.14-R, Volume 5, Disbursing Policy and Procedures, provides specific procedures, findings and recommendations for investigation of major losses of funds due to physical loss, or illegal, incorrect, or improper payment. Command investigations appointed under the JAGMAN are used in the case of major losses of funds, defined as those losses of $750.00 or more or any physical loss where there is evidence of fraud within the accounting function, regardless of the dollar amount. JAGMAN investigations are not required in the case of minor losses, defined as losses of less than $750.00 without any evidence of fraud internal to the accounting function. Chapter 6 of DOD 7000.14-R, Volume 5, provides the procedures for investigating and reporting minor losses. In addition to any specific requirements of the appointing order or DOD 7000.14-R, investigations into losses or excesses of public funds or property must include, at a minimum:

(1) What items were lost or found in excess and the exact dollar value of the loss or excess, e.g., property, vouchers, cash, and so forth.

(2) The nature of the loss or excess, inventory gain or loss, cash shortage, or overage, etc. and, in case of loss of funds, whether the loss was a loss of proceeds of sale of Government property, a physical loss of funds, or the result of illegal or improper payment. Losses due to embezzlement or fraudulent acts of subordinate finance personnel, acting alone or in collusion with others, are physical losses, while all other payments on forged checks or vouchers are improper payments.

(3) How the loss or excess is being carried in the command's accounts.

(4) The facts and circumstances surrounding the loss or excess, and an opinion as to the cause of the irregularity or, if the cause cannot be determined, the most likely cause and the reasons it is so considered.

(5) The identity and position of the accountable officer, and the identity and position of any other person who had custody of the funds or property in question.

(6) The general reputation of the accountable individuals for honesty and care in the handling and safeguarding of funds or property entrusted to them.

(7) The experience and training of the accountable individual in the handling of funds or property, as appropriate, and the workload, including collateral duties, of the accountable individual at the time of the irregularity.

(8) A description, with diagrams where appropriate, of the physical working conditions of the accountable individual who incurred the loss or excess, including a description of physical security arrangements and devices, and security containers and persons with access to them, if applicable, and a statement of whether they were being used properly at the time of the irregularity.

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(9) A description of the internal control procedures in effect in the division, department, or office where the irregularity occurred, and a statement whether they were being applied properly at the time of the irregularity. If relevant, include information on recent inspections, assist visits, management control reviews, or other evaluations of procedures.

(10) Identification of the regulations pertinent to the handling of the property or funds involved and a statement whether the regulations were followed.

(11) A description of remedial measures taken to prevent recurrence of the irregularity.

(12) An opinion whether the loss or excess was proximately caused by the fault or negligence of any accountable individual or by an act of a non-accountable individual that can be the basis for financial liability under section 0167.

g. Guidelines for determining fault or negligence

(1) "Fault" means conduct showing bad faith, gross mismanagement, or neglect of care and may be inferred from irregularities resulting from inattention, dereliction, or perversity.

(2) "Negligence" means failure to exercise care that a reasonable, prudent, accountable person would have exercised under the same or similar circumstances. Failure to know and follow regulations for the care and safeguarding of public funds or property normally is considered negligence, as is failure to follow normal and customary disbursing, collection, or safeguarding procedures or standards without sufficient reason.

(3) "Proximate cause" means the irregularity was the direct and foreseeable consequence of an act or omission, or that the act or omission created the conditions for occurrence of the irregularity. A proximate cause is a cause without which the irregularity would not have occurred.

(4) Burden of proof. There is no burden of proof on the Government to show fault or negligence on the part of an accountable individual. The individual is automatically accountable for the loss and has the burden of establishing that he was not at fault or negligent in order to avoid financial liability. Normally, however, investigators and reviewing authorities should not presume fault or negligence from the mere fact that an irregularity occurred, except that negligence may be presumed when a loss of public funds is entirely unexplained.

h. Distribution. Reports of investigation under this section should be forwarded as described in section 0218. In addition, reports should be provided as follows:

(1) For investigations of losses or excesses of disbursing funds or documents, a copy, as finally reviewed and acted upon pursuant to section 0209, shall be forwarded to Director, Defense Finance and Accounting Service, Cleveland Center, Code FFA, 1240 E. 90th Street, Cleveland, OH 44199.

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(2) For investigations of losses or excesses of Government property or proceeds from the sale of Government property, the report shall be forwarded to the Commander, Naval Supply Systems Command, the Chief, Bureau of Medicine and Surgery, or the Commandant of the Marine Corps (Code LA), as appropriate.

(3) For investigations involving fraud of public funds, waste, inefficiency, and related improprieties, the report shall be forwarded to the Office of the Navy Inspector General.

0250 CLAIMS FOR OR AGAINST THE GOVERNMENT/DUAL PURPOSE INVESTIGATIONS

a. General. An investigation ordered to inquire into an incident may, if a claim for or against the Government is involved from the same incident, be ordered to include those considerations required by section 0209 and Chapter VIII of this Manual. In such cases, the separate investigation required by the claims regulations need not be made, but a "dual purpose" investigation must include the information necessary for claims adjudication. Combining a claims investigation with an inquiry or investigation ordered for other reasons is discretionary. Litigation-report investigations shall be used when documentation of the facts in anticipation of a claim is the primary purpose of the investigation. Claims often arise, however, from major incidents investigated by courts of inquiry, or from incidents documented by a command investigation. The type of investigation convened must take into account that a command investigation or court of inquiry, once begun, may not be protected from subsequent release to the public and use in litigation. Commander's should consult the cognizant judge advocate regarding the type of investigation to convene in any case in which there is a substantial possibility of a claim for or against the Government. When a claim is likely to result from an incident giving rise to an investigation, a copy of the investigation must be provided to OJAG (Code 15), TCU. Any investigation of an incident which may give rise to a claim should document the facts discussed in this section.

b. Procedures when claims matters are involved. When conducting an investigation into claims matters the investigator(s) shall be guided by section 0209 and Chapter VIII of this Manual, and endorsements to the report of investigation shall include any matters required by that section and chapter. Additionally, JAGINST 5890.1 (series) provides detailed guidance regarding claims processing procedures.

c. Forwarding records. The investigation convened specifically to document matters that are expected to give rise to a claim for or against the Government shall normally be a litigation-report investigation conducted under the direction and supervision of a judge advocate. As discussed in section 0209, the CA of a litigation-report shall retain a copy of the report and forward the original and one copy to the Office of the Judge Advocate General (Code 15), Tort Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989, via the staff judge advocate of the GCMCA in the chain-of-command. The CA will also provide copies to his superiors in the chain-of-command and other commands that have a direct official need to know the results of the investigation. Chapter VIII of this Manual and JAGINST 5890.1 (series) provide guidance for reports that must be forwarded to higher authority.

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d. Claims arising in foreign countries. Claims that arise in foreign countries shall normally be handled under Chapter VIII of this Manual, applicable treaties, or international agreements. The appointing order shall reference these sources for guidance in conducting the investigation.

e. Required facts and opinions. Incidents giving rise to claims for or against the Government may be investigated using any JAGMAN investigative method, i.e., command investigations, litigation-report investigations, and courts and boards of inquiry. While litigation-reports are normally used to document facts and gather evidence in cases in which the primary interest is adjudication of a claim or litigation, some incidents will be investigated by courts of inquiry or command investigations, particularly when the incident being investigated involves large scale property damage, loss of life, or raises issues concerning the management of Naval activities. Moreover, investigations involving active duty deaths must be released to next of kin; therefore, the report should not be a litigation report. It is necessary that the investigating officer consult and work closely with a judge advocate who will be able to assist with the specific requirements of each case. Unless otherwise directed, all investigations into incidents which may result in claims must answer the following fundamental questions:

(1) The identity of those involved, including name, rank/grade, unit, age, address (home and work), telephone number, occupation, and how they were involved, e.g., deceased as a result of the incident, in which case, identifying information for the next-of-kin or legal representative must be provided, as well, injured party, owner of property damaged, military member whose acts or omissions are alleged to have caused the harm, or witness. The findings of fact should provide information on how those involved may be located. Moreover, every attempt should be made to obtain a permanent address that will be accurate for at least 5 years after the accident. Indicate for each individual their status as military (indicate Regular or Reserve, on active duty, TAD, leave, liberty, and so forth at the time of the incident, after consulting section 0252 with regard to Reserves) or civilian (indicate whether they are a Federal employee or are a personal services contractor employed by an independent contractor). If maintenance or training is involved, identify the individual responsible for the maintenance or training at issue;

(2) Date, time, and place of incident, including a full description of location, terrain, weather, light conditions, obstructions, and photographs of the site;

(3) Nature of the claim, e.g., wrongful death, personal injuries, property damage;

(4) A factual description of what happened, how the parties were injured, what equipment was being used, who was operating the equipment, who was supervising or should have been supervising, whether equipment failed or was operated incorrectly, if equipment failure, the maintenance history of the equipment, if the injury occurred on Government property, the condition of the property, who was responsible for the property's upkeep, the authority for the injured party to be present on Government property;

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(5) The nature and extent of personal injuries, if any:

(a) amount of medical, dental, and hospital expenses incurred, supported by itemized bills or receipts for payment;

(b) nature and extent of treatment, e.g., the number of days hospitalized, the name and address of all treating hospitals and medical facilities, the name(s) and addresses of all treating physicians or other care givers, extent and nature of all follow-on or outpatient care;

(c) prognosis;

(d) degree of disability, if any, e.g., total, partial permanent, partial nonpermanent, describe limits of use;

(e) diminished earning capacity, if any;

(f) Necessity for future treatment and estimated costs, if any;

(g) Salary/earnings lost due to time lost from employment, e.g., actual number of work days lost, estimated compensation for that period based on hourly wage or salary, indicate full time, part-time, or self-employed;

(h) If an individual died as a result of the incident under investigation and the estate or survivors file a claim against the Government, consult with a judge advocate regarding the wrongful death or survival statute applicable in the jurisdiction where the harm occurred. Document the time of death relative to the injury, intervening treatment and state of consciousness, cause of death as established by autopsy, pre-existing medical conditions, age, occupation, burial expenses, and heirs;

(6) Amount of property damage, including photographs before and after, if possible, and estimates or bills of repair and receipts, whether any pre-existing damage existed, original purchase price, date of purchase, salvage value of property, if any;

(7) Extent of damage to Government property, estimates or bills of repair and receipts, original purchase price, date of purchase, and salvage value of property, if any. If no damage, so state;

(8) Whether the claimant has insurance for this type of damage or injury, the insurance company, policy number, policy provisions relevant to this claim or incident, extent of coverage, limits on liability, whether a claim has been or will be made against the insurance carrier, the status of any such claim;

(9) Names and addresses of other owners, if claimant is not the sole owner of the property;

(10) Existence of any police or other investigative report, name and address of investigating officer and unit, custodian of original investigation, provide a copy of any police report as an enclosure;

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(11) Whether civilian or military criminal charges were filed, the jurisdiction in which they were filed, and the status or final disposition of those charges;

(12) Existence of any law, regulation, or order relevant to the incident and whether it was violated;

(13) If a stray animal was involved, whether the jurisdiction has an "open range" law, attach a copy as an enclosure;

(14) An opinion whether any military personnel involved were acting in the scope of their employment at the time of the incident; if not a litigation-report investigation, consult with the cognizant judge advocate before inclusion;

(15) An opinion regarding the cause(s) of the incident. If the facts are insufficient to form an opinion regarding the cause(s), indicate those factors which significantly contributed to the incident; if not a litigation-report investigation, consult with the cognizant judge advocate before inclusion;

(16) An opinion regarding fault or negligence; if not a litigation-report investigation, consult with the cognizant judge advocate before inclusion;

(17) An opinion whether a claim is likely to be filed, the amount likely to be claimed, and the names and addresses of any potential claimants and their legal representatives, if any; and

(18) Whether a claim should be filed by the Government for personal injuries to its employees or property damage.

f. Sonic booms, jet noise, and artillery noise. The nearest Navy or Marine Corps aviation activity receiving notice that a sonic boom occurred within the U.S., regardless of whether damage was reported, is responsible for an inquiry to determine whether a military aircraft caused the disturbance. The inquiry shall include queries to all Navy, Marine Corps, Air Force, Air National Guard, and other military facilities in the area where supersonic aircraft operate. All traffic, transient as well as local, shall be checked.

(1) The principal types of damage caused by a sonic boom are glass and plaster damage. Less frequently, claims are received for damage allegedly caused to brick walls, driveways, concrete foundations, and other major structural elements. Studies have shown that it is almost impossible for a sonic boom to generate over-pressures of sufficient intensity to cause such structural damage regardless of the aircraft's altitude. Whenever questionable items of damage are claimed, the services of a construction engineer or other professionally qualified person should be employed as investigator or as consultant to the investigator. The following information shall be included in any investigative report regarding sonic booms, jet noise, or artillery noise:

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(a) detailed description of alleged damage;

(b) photographs of the allegedly damaged building or structure and of the specific area of damage; see section 0214c(4);

(c) detailed description of the building or structure involved, including significant details of construction, size of rooms, age, and general state of repair;

(d) detailed examination and description of any alleged plaster damage;

(e) existence or absence of glass damage in the allegedly damaged building or structure and whether any other glass damage resulting from the incident was reported and verified;

(f) whether windows and doors were open or shut at the time of the boom;

(g) whether any loose objects, such as dishes, glassware, or trinkets inside the building or structure were moved as the result of the boom;

(h) existence or absence of similar damage to other buildings in the immediate neighborhood;

(i) type of surrounding community development, type of construction, and density of buildings or structures in the immediate area, and so forth;

(j) occurrence or absence of seismic disturbances registered in the locality at the time involved;

(k) other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, and their distance and direction in relation to claimant's building or structure;

(l) any unusual weather or climatic conditions that may have affected the building or structure;

(m) complete physical description of the aircraft alleged to have caused the damage, including markings, whether jet or propeller driven, and any other distinctive characteristics;

(n) full description of the approximate altitude, maneuvers, speed, direction of flight, time of day, date, formation, and number of aircraft;

(o) any complaints of noise or sonic booms received by any duty office which coincides with the alleged damage; and

(p) authorization, description of flight, aircraft involved, applicable charts, and air controller transcripts or audiotapes of aircraft in the vicinity of the alleged damage.

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(2) If, after investigation, it is considered that a sonic boom, jet noise, or artillery noise incident occurred, and it resulted from Navy or Marine Corps operations, action shall be taken under Chapter VIII of this Manual. If it is considered that the sonic boom, jet noise, or artillery noise was caused by activities of another U.S. military service, claims received and any investigative material shall be forwarded to the appropriate command, and the claimant so informed. If the sonic boom or noise was caused by non-military activities, e.g., National Aeronautics and Space Administration or aircraft manufacturers, or if the source cannot be determined, action shall be taken under Chapter VIII of this Manual. Opinions as to the cause of a sonic boom, jet noise, or artillery noise, shall not be expressed to a complaining party, except by a person authorized to negotiate the settlement of the claim.

0251 HEALTH CARE INCIDENTS

a. General

(1) Incidents arising out of the delivery of health care in a military treatment facility shall be investigated in accordance with this section. The purposes of the investigation are to gather all facts pertinent to the incident, to determine the cause and contributing factors to the incident, and to ascertain the nature and extent of injuries suffered as a proximate result of the incident. Investigations under this section are separate from any quality assurance investigation conducted by the staff of the military treatment facility (MTF) solely for quality assurance purposes, see paragraph (b) below. Most health care incidents should be documented by a command investigation, or if a claim is anticipated, a litigation-report investigation.

(2) Health care investigations shall be convened in the following circumstances:

(a) when a claim has been filed against the U.S., its officers, or its employees as a result of a health care incident. Incidents involving Government contractors and their employees should also be investigated, if it is likely that the U.S. may be joined or impleaded as a party to a lawsuit, or where a claim under a contract between the U.S. and the contractor is likely.

(b) in any case involving death, or a potentially compensable event, where the adequacy of health care rendered by Government employees or provided in a MTF is reasonably in issue. Potentially compensable events include:

1. unexplained death, including apparent suicide;

2. any complication in treatment which results in: corrective procedure; brain damage; motor weakness; sensory nerve injury; total or partial loss of limb; sensor organ loss or impairment; or reproductive organ loss or impairment;

3. inadvertent blood transfusion with HIV or hepatitis-virus

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contaminated blood;

4. procedure performed on wrong patient or body part, including extraction of the wrong tooth;

(c) When necessary to make administrative determinations, other than actions involving clinical privileges concerning health care personnel.

(d) When necessary to assist convening and reviewing authorities in making decisions concerning the delivery of health care. In this regard, the impact of the following should be taken into consideration:

1. training of health care personnel;

2. design or maintenance of material or equipment;

3. assignment and qualifications of personnel;

4. supervision of trainees; and

5. health care delivery policies or the lack thereof.

b. Relationship to medical quality assurance program

(1) The Chief, Bureau of Medicine and Surgery, has issued guidance concerning the health care quality assurance program in BUMEDINST 6010.13 (series). Records created as a part of the quality assurance program are privileged documents under 10 U.S.C. § 1102.

(2) Although health care investigations are not created as part of the quality assurance program, and therefore are not entitled to the confidentiality and privilege mentioned above, they may be used as input to the quality assurance review process.

(3) Inquiries into the circumstances surrounding a health care incident done exclusively for quality assurance purposes should be clearly labeled as such. Such inquiries are not subject to the requirements of this chapter.

c. Required facts and opinions. The scope of the health care investigation will vary depending upon the nature and circumstances of the incident under review. The following information shall be included in the report of investigation into a health care incident:

(1) A comprehensive chronology and description of all relevant facts.

(2) Identification of all involved health care providers, including their credentials, education, training, experience, status (trainee or staff, Government employee or contractor), and role (attending, consulting, or supervision). Of primary importance is the full identification of the staff physician responsible for the patient's care at the time of the incident. The findings of fact or enclosures should provide information on how those providers involved may be located. Every attempt should be made to obtain a permanent address. If maintenance of equipment or training of personnel is

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involved, identify the individual(s) responsible for the maintenance or training at issue.

(3) Patient information, including medical history, condition immediately prior to incident under review, and current condition supported by all relevant medical records. Included in this information should be the following:

(a) the patient's name, date of birth, age, sex, address, phone number, marital status, occupation, and dependents;

(b) nature and extent of injuries alleged to have occurred, special damages, additional treatment required, prognosis, degree of disability, loss of chance of recovery, if any, and the names and addresses of subsequent treating physicians or health care providers, if any; and

(c) in instances where a claim has been received or the patient has verbally indicated an intent to file a claim, any interviews with the claimant or other family members should be summarized, and signed by the potential claimant, if possible. Prior to any contact with a claimant or potential claimant, the investigating officer shall clear such contact with the cognizant judge advocate.

(4) A copy of the claim and any other documents or correspondence which shed light on the claimant's or potential claimant's contentions concerning the matter.

(5) A statement indicating all of the medical records, inpatient, outpatient, and special studies (x-rays, tissue slides, EKG tapes, fetal monitoring strips, etc.) have been secured. The investigation must indicate the date and person who secured those items and the current location and custodian of each. Copies of the complete medical record must be included with the investigation. Entries must be reviewed to ensure handwriting is legible and, if illegible, typed transcripts should be attached to the investigation.

(6) All special studies must be retrospectively reviewed to assess whether the original interpretations were accurate. If possible, retrospective reviews must be structured as "blind" reviews, i.e., the reviewer should not be aware of the previous interpretation. A summary containing the name and credentials of the person conducting the retrospective review and that person's findings must be included with the investigation. The summary should not be signed by the reviewer.

(7) Copies of all relevant documents, including:

(a) the MTF staff bylaws;

(b) all relevant MTF policies, procedures, and protocols, clinical/surgical, nursing, and ancillary services such as the laboratory or pharmacy, and health care administrative policies, in effect at the time of the incident that might have a bearing on the issues;

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(c) all relevant logbook entries pertaining to the patient maintained by labs/clinics/offices (i.e., emergency room logs reflecting arrival/departure times, ambulance log book/trip sheets/rescue service reports, and centralized appointment registers/print-outs or pharmacy history printouts); and

(d) all patient information pamphlets, brochures, or sheets which were provided to the patient.

(8) In cases involving contract providers, a copy of the contract. Notifying a contractor that a claim exists or a potentially compensable event has occurred must be coordinated with the contractor's representative and the legal advisor to the command. Attach a statement to the investigation indicating the action taken regarding notification to a contractor, and include a copy of any written notification that may have been provided.

(9) For incidents involving possible equipment/device failure, include the following:

(a) photographs of equipment/devices taken before the equipment/device is moved, used again, altered, tested, or repaired. Photographs must be annotated to reflect the time, date, and identity of the person who took the photograph;

(b) the date, location, and names of the persons involved in the evaluation of the equipment/device and the findings thereof. Equipment/devices must be removed from service and secured until examined by appropriate technical representatives. Equipment/devices must not be used, altered, tested, or repaired until properly evaluated; and

(c) copies of maintenance reports and any protocols for the maintenance and repair of the equipment/device in question at the time of the incident.

(10) Results of a review of the staffing levels, physician, nursing, corpsman, and ancillary, at the time of the incident. Include in the review the "currency" of the members to perform their duties at the time of the incident and their "orientation" to perform the duties assigned at the time of the incident.

(11) A statement of the standard of care for any practices, procedures, policies, protocols, or systems involved in the incident and the basis which establishes that standard of care; provide a copy of relevant medical literature, texts, treatises, articles, policies, practices, or procedures. This refers to clinical/surgical procedures, nursing procedures, ancillary services such as the medical laboratory or pharmacy procedures, and health care administrative policies. The source and date of documents relevant to the standard of care must be provided.

(12) Summaries of expert reviews of the care documented by the investigation. The summary must:

(a) identify the reviewer and the reviewer's credentials, and contain an evaluation, i.e., expert opinion, describing the duty that was owed

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the patient (standard of care);

(b) indicate the manner in which the duty was either met or not met;

(c) in instances in which the duty was not met, provide an opinion on whether the act or omission resulted in harm to the patient and, if so, a description of the harm, including an explanation of how the harm may affect the patient in the future; and

(d) where there has been a deviation from the standard of care, the summary must contain an opinion regarding the cause(s) or contributing factors for any deviation from the standard, the name(s) of persons responsible for the deviation, and a description of corrective action, if required, in terms of personnel, equipment, or policy.

(13) Each provider whose actions are at issue must be provided an opportunity to make a statement for inclusion in the investigation. The investigating officer should summarize the results of the interview using care to be as accurate and complete as possible. Summaries of interviews with providers shall not be signed but authenticated by the investigating officer's signature.

0252 RESERVISTS

a. Statutory provisions. 10 U.S.C. § 1074a governs entitlement to medical and dental care administered by the Navy for persons in the Navy who incurred or aggravated an injury, illness, or disease while performing active duty or annual training for a period of 30 days or less, or inactive-duty training, or while traveling directly to or from such duty.

b. Annual training. The period of annual training extends from the time of reporting to the time of release, and, if the orders to active duty for training provide for travel, the time of travel to and from the duty station not in excess of the allowable constructive travel time as prescribed DoDFMR, DoD 7000.14-R, Volume 9, Travel Policy and Procedures.

c. Investigation. Incidents involving injury or death of reservists occurring during a period of annual training or inactive duty training (drill), as defined above, or that occur while traveling directly to or from places where members are performing or have performed such duty, or any case involving a question of whether a disease or injury was incurred during a period of annual training, inactive duty training (drill), or travel, as defined above, should be investigated. The Region Commander or designated subordinate commander in whose geographic area of responsibility the incident occurred has the responsibility to ensure that investigations are conducted into incidents involving Naval reservists. The Commanding General, 4th Marine Division, and the Commanding General, 4th Marine Aircraft Wing, are responsible for ensuring that investigations are conducted into incidents involving reservists within their commands.

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d. Required facts and opinions. An investigation involving Reserve personnel should include:

(1) Hour the reservist began travel directly to or from duty or training;

(2) Hour the reservist was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) Method of travel used;

(4) Actual itinerary and authorized itinerary;

(5) Authorized mode of travel and authorized travel time;

(6) Manner in which travel was performed; and

(7) Place, time, and circumstances of injury or death.

0253 FIREARM ACCIDENTS

a. General. A command investigation shall normally be used to document all relevant circumstances of incidents involving accidental or apparently self-inflicted gunshot wounds.

b. Required facts and opinions. An investigation involving firearm accidents shall include:

(1) Date, time of day, and names and addresses of witnesses present;

(2) Description of physical location of incident and light and weather conditions;

(3) Description of the firearm and its mechanical condition, especially safety mechanisms, and whether the safety mechanisms were used by the firearm handler;

(4) Authorization for possession of the firearm, including how, when, and where it was obtained;

(5) Description of firearm handler's formal training, experience, and familiarity with the firearm's condition, safety procedures, and proper use; and

(6) Discussion of any psychological problems, mental impairment due to drug or alcohol use, and mental responsibility of the firearm handler.

0254 OTHER INCIDENTS

a. Pollution incidents. When pollution incidents are required to be investigated because of service regulations, other than the JAGMAN, or because of applicable Federal, State, or local laws or regulations, a copy of any

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report should be submitted directly to OJAG (Code 12) and the geographic environmental coordinator as set out in OPNAVINST 5090.1 (series). Further guidance concerning pollution incidents is contained in Chapter XIII of this Manual. A litigation-report investigation should normally be convened, unless the event amounts to a major incident requiring a court of inquiry. When the pollution originates from a U.S. vessel, also see Chapter XII of this Manual. The following information shall be included in the report of investigation of pollution incidents and spills:

(1) Location and circumstances of the spill, including the weather and conditions at the site (visibility, darkness, presence/phase of the moon), how, when, and by whom the spill was detected;

(2) Description of the activity occurring when the spill occurred, e.g., shifting fuel, taking on fuel, pumping bilges;

(3) Type of material, e.g., fuel, oil, other hazardous material;

(4) Estimated quantity of material spilled and the basis for the estimate;

(5) Source of the spill, e.g., tank, drum, or valve;

(6) Identity of personnel involved including name, rank/grade, unit, address (home and work), age, training and experience for task, and who was (or should have been) providing supervision;

(7) Whether required reports were made, e.g., reports required by OPNAVINST 5090.1 (series), reports to the National Response Center, reports required by State and local law, reports to the Navy operational chain-of-command, and reports under the Emergency Planning and Community Right-To-Know Act (EPCRA);

(8) Whether local SOPA and command instructions were complied with;

(9) Description of cleanup, including membership of the quick response team, training, response time, actions taken, equipment used, effectiveness of equipment and personnel, availability and readiness of equipment and personnel;

(10) Nature and extent of damages to Government and private property;

(11) Personal injuries, if any, including name of injured parties and extent of injuries; see section 0250 regarding claims;

(12) Attach copies of relevant training documents (e.g., Personnel Qualification Standard (PQS) records), deck/watch logs, and engineering logs which support the facts; and

(13) An opinion regarding the cause of the spill, e.g., faulty equipment, container, fitting, or valve, operator error/safety, or operational procedure error.

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b. Combined investigations of maritime incidents. For maritime incidents involving two or more NATO countries, commands may conduct a single investigation under NATO Standardization Agreement 1179 (STANAG). This sets forth three alternative investigation procedures: (1) combined board of inquiry; (2) national inquiry, attended by witnesses or observers from other nations; and (3) independent inquiries coordinated by the presidents of those inquiries.

c. Security violations. For specific investigation requirements respecting investigations ordered to inquire into the loss, compromise, or possible compromise of classified information; see SECNAVINST 5510.36, Chapter 12. Such reports are sent to CNO (N09N) as ultimate addressee. A command investigation shall normally be used.

d. Postal violations. For specific investigation requirements respecting investigations ordered to inquire into postal losses or offenses, see paragraph 601, Department of the Navy Postal Instructions, OPNAVINST 5112.6 (series). In such cases, command investigations may be convened.

e. Allegations of discrimination or sexual harassment. Investigations of alleged discrimination or sexual harassment, including reporting and review procedures, are governed by OPNAVINST 5354.1 (series). Similar Marine Corps investigations are governed by MCO 5354.1 (series).

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DEFINITIONS

1. Administrative Investigation. Administrative investigations collect and record information. Their reports are advisory. Their opinions, when expressed, do not constitute final determinations or legal judgments, and their recommendations, when made, are not binding upon convening or reviewing authorities.

2. Class A Aircraft Accident. A mishap involving an aircraft that results in:

a. loss of life or permanent total disability that occurs with direct involvement of Naval aircraft;

b. damages to the aircraft, other property, or a combination of both, in an amount in excess of the amount specified by the Secretary of Defense for purposes of determining Class A accidents. In 1996, this amount was set at $1,000,000; see DODI 6055.7 (series); or

c. the destruction of the aircraft.

3. Clear and Convincing Evidence. A degree of proof beyond a preponderance but less than the near certainty of beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable. To be clear and convincing, evidence must leave no serious or substantial doubt as to the correctness of the conclusion in the mind of objective persons after considering all the facts.

4. Cognizant Judge Advocate. The judge advocate (see definition below) who, by regulation or practice, is responsible for providing legal advice to the concerned convening or reviewing authority. This often will be a station, staff, fleet, or force judge advocate, but may also include the command services or claims officer at the servicing Region Legal Service Office.

5. Command Investigation. An administrative investigation conducted into an incident of primary interest to command authorities. It need not be forwarded to OJAG.

6. Intoxication. A state of impairment of the mental or physical faculties that prevents their rational and full exercise. Whether the impairment is caused by ingesting liquor or drugs, or by inhaling fumes or vapors, is immaterial.

7. Judge Advocate. As used in this chapter, the term ordinarily refers to a military lawyer, but may include attorneys assigned to the Office of the Navy General Counsel.

8. Litigation-Report Investigation. An administrative investigation conducted under the direction and supervision of a judge advocate in anticipation of litigation or claims. All litigation-report investigations must be forwarded to OJAG (Code 15), TCU.

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9. Major Incident. An extraordinary incident occurring during the course of official duties resulting in multiple deaths, substantial property loss, or substantial harm to the environment, where the circumstances suggest a significant departure from the expected level of professionalism, leadership, judgment, communication, state of material readiness, or other relevant standard. Substantial property loss or other harm is that which greatly exceeds what is normally encountered in the course of day-to-day operations. These cases are often accompanied by national public and press interest and significant congressional attention. They may also have the potential of undermining public confidence in the Naval service. That the case is a major incident may be apparent when it is first reported or as additional facts become known.

10. Mishap Unit. The unit of the Armed Forces, at the squadron or battalion level or equivalent, to which was assigned the flight crew of the Naval aircraft that was involved in the accident that is the subject of the investigation.

11. Person. For the purposes of this chapter, a person is an individual, not an organization or corporation.

12. Personal Information. In the context of Privacy Act requirements, personal information is information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life. It includes information pertaining to an individual's financial, family, social, and recreational affairs; medical, educational, employment, or criminal history; and information that identifies, describes, or affords a basis for inferring personal characteristics, such as finger or voice prints or photographs. It ordinarily does not include information associated with an individual's actions or inactions that are directly related to the duties of Federal employment or military assignment.

13. Preponderance of Evidence. A preponderance is created when the greater weight of evidence, or evidence that is more credible and convincing to the mind, is offered in support of, rather than in opposition to, any given fact. Weight of evidence in favor of establishing a particular fact is not to be determined by the sheer number of witnesses or volume of evidentiary matter presented on either side, but by that evidence that best accords with reason and probability.

14. Proximate Cause. That which, in a natural and continuous sequence, unbroken by any significant intervening factor, causes an event, and without which the result would not have occurred. For example, if a sailor voluntarily becomes intoxicated and then wilfully exceeds the speed limit by 30 mph, loses control of his vehicle, crashes into a tree and, as a result, suffers severe injury, then his voluntary intoxication may be said to be the proximate cause of his injury. Conversely, if another sailor voluntarily becomes intoxicated, begins to drive home, is struck by another vehicle which failed to yield the right of way at an intersection and, as a result, suffers severe injury, then her voluntary intoxication cannot be said to be the proximate cause of her injury.

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15. System of Records. In the context of the Privacy Act, a system of records is a group of records under the control of the DON from which information is retrieved by an individual's name or some identifying number or symbol.

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PARTIES - DEFINITIONS AND RIGHTS

1. Party. A "party" is an individual who has properly been so designated in connection with a court of inquiry or a board of inquiry required to conduct a hearing whose conduct is either the subject of the inquiry or has a direct interest in the inquiry. No individual has a right to demand a court of inquiry.

2. Subject to Inquiry. A person's conduct or performance of duty is "subject to inquiry" when the person is involved in the incident or event under investigation in such a way that disciplinary action may follow, the person's rights or privileges may be adversely affected, or the person's reputation or professional standing may be jeopardized.

3. Direct Interest. A person has a "direct interest" in the subject of inquiry:

a. When the findings, opinions, or recommendations of the fact-finding body may, in view of the person's relation to the incident or circumstances under investigation, reflect questionable or unsatisfactory conduct or performance of duty; or

b. When the findings, opinions, or recommendations may relate to a matter over which the person has a duty or right to exercise official control.

4. Rights. A person duly designated a party before a fact-finding body shall be advised of and accorded the following rights:

a. To be given due notice of such designation.

b. To be present during the proceedings, but not when the investigation is cleared for deliberations.

c. To be represented by counsel.

d. To examine and to object to the introduction of physical and documentary evidence and written statements.

e. To object to the testimony of witnesses and to cross-examine adverse witnesses.

f. To introduce evidence.

g. To testify as a witness.

h. To refuse to incriminate oneself; and, if accused or suspected of an offense, to be informed of the nature of the accusation and advised of the right not to make any statement regarding the offense of which accused or suspected and that any statement made may be used as evidence in a trial by court-martial.

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i. To make a voluntary statement, oral or written, to be included in the record of proceedings.

j. To make an argument at the conclusion of presentation of evidence.

k. To be properly advised concerning the Privacy Act.

l. To challenge members.

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SAMPLE COMMAND INVESTIGATION CONVENING ORDER

5800
Ser
[Date]

From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, CA
To: Capt _____, USMC

Subj: COMMAND INVESTIGATION OF THE FIRE THAT OCCURRED AT ____ ON __ AUGUST 20__

Ref: (a) JAGMAN

1. This appoints you, per Chapter II of reference (a), to inquire into the facts and circumstances surrounding the fire that occurred at _____ on __ August 20__.

2. Investigate the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefore, and recommend appropriate administrative or disciplinary action. Report your findings of fact, opinions, and recommendations in letter form by __ September 20__, unless an extension of time is granted. If you have not previously done so, read Chapter II of reference (a) in its entirety before beginning your investigation.

3. You may seek legal advice from _____ during the course of your investigation.

4. By copy of this appointing order, Commanding Officer, Headquarters Company, is directed to furnish necessary clerical assistance.

_____
Colonel, U.S. Marine Corps

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CG, MCB CamPen, CA
CO, HQCo, HQBn, MCB, CamPen, CA

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SAMPLE COMMAND INVESTIGATION REPORT

5800
[Date]

From: Capt _____, USMC
To: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, CA

Subj: SAME AS SUBJECT ON CONVENING ORDER

Encl: (1) Appointing order and modifications thereto (if any were issued)
(2) Summary (or verbatim) of sworn (or unsworn) testimony of _____ (a witness)
(3) Summary (or verbatim) of sworn (or unsworn) testimony of_____ (a witness)
(4) Statement of_____, signed by witness
(5) Description of _____ (evidence found at scene of the accident)
(6) Photograph of _____ depicting_____

Note: Testimony of each witness, observations of the investigator, photographs, diagrams, and suitable reproductions of tangible evidence should be listed and attached as enclosures to the investigative report. The location of all original evidence, such as logs, charts, tangible items, and so forth, and the name and phone number of the official responsible for its safekeeping must be stated in the report, either on each enclosure or in the preliminary statement.

Preliminary Statement

1. Paragraph 1 of an investigative report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, see section 0216(c) for required contents. Where applicable, an investigating officer should indicate the name and organization of any judge advocate consulted. Extensions of time to complete the report should be noted here. Also state in appropriate cases that the matter was first referred to NCIS and NCIS expressed no objection to proceeding with the investigation.

Findings of Fact

1. _____. [Encls ( ), ( )]

2. _____. [Encls ( ), ( )]

3. _____. [Encl ( )]

Note: Findings of fact constitute an investigating officer's description of details of events based on evidence. Findings must be as specific as possible about time, places, and persons involved. Each fact may be made a separate finding. An investigating officer may determine the most effective presentation for a particular case. Each fact must be supported by testimony of a witness, statement of the investigating officer, documentary

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evidence, or tangible (real) evidence attached to the investigative report as an enclosure. Each finding of fact should reference each enclosure that supports it.

Opinions

1. _____. [FF ( )]

2. _____. [FF ( ), ( )]

3. _____. [FF ( )]

Note: An opinion is a reasonable evaluation, reference, or conclusion based on facts found. Each opinion must be supported by findings of fact. Determination of line of duty and misconduct is properly stated as an opinion.

Recommendations

1. _____.

2. _____.

3. _____.

Note: If an investigating officer recommends trial by court-martial, a charge sheet drafted by the investigating officer may be prepared and submitted to the convening authority with the investigative report. See R.C.M. 307, MCM. **The charge sheet should not be signed; i.e., charges should not be preferred since preferral starts the "speedy trial clock" running. Before preferring charges, the local legal service office or staff judge advocate should be consulted.** Unless specifically directed by proper authority, an investigating officer must not notify an accused of charges. Notification is the responsibility of the commanding officer of an accused. See R.C.M. 308 and 707, MCM. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter must be prepared and forwarded with the investigative report. Proposed nonpunitive letters of caution must not be forwarded with the report; see section 0217.

_____
(INVESTIGATING OFFICER)

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SAMPLE LITIGATION-REPORT INVESTIGATION APPOINTING ORDER

5800
Ser
[Date]

From: Commanding Officer, Naval Submarine Base New London
To: LT _____, USN

Subj: LITIGATION-REPORT INVESTIGATION OF THE FIRE THAT OCCURRED AT QUARTERS XYZ, NAVSUBBASE NLON, ON ___ AUGUST 20__

Ref: (a) JAGMAN, Chapter II

1. Per reference (a), you are hereby appointed to investigate the circumstances surrounding the fire that occurred at Quarters XYZ, Naval Submarine Base New London on __August 20__, and to prepare the related litigation-report. During the investigation, you will be under the direction and supervision of LCDR _____, JAGC, USN. Consult LCDR _____ before beginning your inquiry or collecting any evidence. If you have not already done so, you should also read Chapter II of reference (a) in its entirety before consulting LCDR _____.

2. This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing interests of the United States in this matter. As such it is privileged and should be discussed only with personnel who have an official need to know of its progress or results. If you have any doubt about the propriety of discussing the investigation with any particular individual, then you should seek guidance from LCDR _____ before doing so.

3. Investigate all facts and circumstances surrounding the fire, including the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefore. Report your findings to LCDR _____ by __ September 20__, unless an extension of time is granted. Do not express any opinions or recommendations unless LCDR _____ directs you to do so. Label your report "**FOR OFFICIAL USE ONLY: ATTORNEY WORKPRODUCT**," and take appropriate measures to safeguard it.

_____

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SAMPLE LITIGATION-REPORT INVESTIGATION

FOR OFFICIAL USE ONLY: ATTORNEY WORKPRODUCT

5800
Ser
[Date]

From: LCDR_____, JAGC, USN
LT _____, USN

To: Commanding Officer, Naval Submarine Base New London

Subj: SAME AS SUBJECT ON CONVENING ORDER

Encl: (1) Appointing order and modifications thereto (if any were issued)
(2) Summary of statement of [witness] (Do not include signed statements)
(3) Summary of statement of [witness]
(4) Description of _____ (evidence found at scene of fire)
(5) Photograph of _____ depicting _____

Note: Summarized statement of each witness, observations of the investigator, photographs, diagrams, and suitable reproductions of tangible evidence should be listed and attached as enclosures to the investigative report. The location of all original evidence, such as logs, charts, tangible items, and so forth, and the name and phone number of the official responsible for its safekeeping must be stated in the report, either on each enclosure or in the preliminary statement.

Preliminary Statement

1. Paragraph 1 of a litigation report must contain information in the form a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, see section 0216(c) for required contents. The name and organization of the supervisory judge advocate should be listed and the following language should be added: "This investigation is being conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing interests of the United States in this matter."

Findings of Fact

1. _____. [Encls ( ), ( )]

2. _____. [Encls ( ), ( )]

3. _____. [Encl ( )]

Note: Findings of fact constitute an investigating officer's description of details of events based on evidence. Findings must be as specific as possible about time, places, and persons involved. Each fact may be made a separate finding. An investigating officer may determine the most effective

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presentation for a particular case. Each fact must be supported by the statement of a witness, statement of the investigating officer, documentary evidence, or tangible (real) evidence attached to the investigative report as an enclosure. Each finding of fact should reference each enclosure that supports it.

Opinions and Recommendations are not made by the investigating officer unless directed by the supervisory judge advocate. Before the report is submitted to the convening authority, however, the supervisory judge advocate should normally add appropriate opinions and recommendations and may request the assistance of the investigating officer in drafting them. Each opinion must be supported by findings of fact, and each recommendation must be supported by an opinion.

_____

(INVESTIGATING OFFICER)

_____

(SUPERVISORY JUDGE ADVOCATE)

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SAMPLE PRIVACY ACT STATEMENT FORMAT - JAGMAN INVESTIGATION

1. **AUTHORITY**: 44 U.S.C. § 3101; 5 U.S.C. § 301. Specify, if possible, other statutory authority listed below that is peculiarly applicable to the matter under investigation.

Authorities applicable to various investigations:

a. Requirement that enlisted members make up time lost due to misconduct or abuse of drugs or alcohol. 10 U.S.C. § 972.

b. Retirement or separation for physical disability. 10 U.S.C. §§ 1201-1221.

c. Manual for Courts-Martial.

d. Uniform Code of Military Justice. 10 U.S.C. §§ 815, 832, 869, 873, 935, 936, and 938-940.

e. Military Claims Act. 10 U.S.C. § 2733.

f. Foreign Claims Act. 10 U.S.C. §§ 2734, 2734a, 2734b.

g. Emergency payment of claims. 10 U.S.C. § 2736.

h. Non-Scope claims. 10 U.S.C. § 2737.

i. Duties of Secretary of the Navy. 10 U.S.C. § 5013.

j. Duties of the Office Chief of Naval Operations. 10 U.S.C. §§ 5031-5033, 5035-5036.

k. Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General. 10 U.S.C. §§ 5021-5024, 5131-5133, 5135, 5137-38, 5141-5142a, 5148-5150.

l. Duties of the Commandant of the Marine Corps. 10 U.S.C. § 5043.

m. Reservists' disability and death benefits. 10 U.S.C. § 1074.

n. Requirement of exemplary conduct. 10 U.S.C. § 5947.

o. Promotion of accident and occupational safety by Secretary of the Navy. 10 U.S.C. § 7205.

p. Admiralty claims. 10 U.S.C. § 7622-7623.

q. Federal Tort Claims Act. 28 U.S.C. §§ 1346, 2671-2680.

r. Financial liability of accountable officers. 31 U.S.C. §§ 3521, 3527, 3531.

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s. Military Personnel and Civilian Employees' Claims Act of 1964. 31 U.S.C. §§ 240-243.

t. Federal Claim Collection Acts. 31 U.S.C. §§ 3521, 3526, 3529, 3701-3702, 3717-3718.

u. Forfeiture of pay for time lost due to incapacitation caused by alcohol or drug use. 37 U.S.C. § 802.

v. Eligibility for certain veterans' benefits. 38 U.S.C. § 105.

w. Postal claims. 39 U.S.C. §§ 406, 2601.

x. Medical Care Recovery Act. 42 U.S.C. §§ 2651-2653.

y. Public Vessels Act. 46 U.S.C. §§ 781-790.

z. Suits in Admiralty Act. 46 U.S.C. §§ 741-752.

aa. Admiralty Extension Act. 46 U.S.C. § 740.

bb. Transportation Safety Act. 49 U.S.C. § 1901.

2. **PRINCIPAL PURPOSE(S)**: The information which will be solicited is intended principally for the following purpose(s):

[Specify each purpose listed below for which the record of the particular investigation could reasonably be used:]

a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave.

b. Determinations on disciplinary or punitive action.

c. Determinations on liability of personnel for losses of, or damage to, public funds or property.

d. Evaluation of petitions, grievances, and complaints.

e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

f. Other determinations, as required, in the course of naval administration.

g. Public information releases.

h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

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3. **ROUTINE USES:** In addition to being used within the Departments of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemembers' Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. **MANDATORY/VOLUNTARY DISCLOSURE - CONSEQUENCES OF REFUSING TO DISCLOSE:**

a. Where disclosure is voluntary, as usually is the case, use one of the following statements, or a combination of the following statements, as applicable:

(1) Where an individual is a subject of an investigation for purpose 2a or 2b, above: "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determinations] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence, which may be needed to support a favorable determination."

(2) Where an individual is a subject of an investigation for purpose 2c, above: "Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held liable for repayment of the Government's loss would be based on the other evidence in the investigative record."

(3) Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: "Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have

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made or may make against the Government as a result of the incident under investigation."

(4) Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: "Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in a Naval medical facilities."

(5) In any other case: "Disclosure is voluntary, and if you do not provide the requested information, any determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record."

b. In the unusual situation where a specific statute, regulation, or lawful order of competent authority requires an individual to disclose particular information for the Government's benefit in furtherance of a Government interest, policy, or objective, the following statement should be used: "Disclosure of (specify the particular relevant information required) is mandatory under (cite the statute, regulation, or order), and refusal to disclose that information will subject you to possible disciplinary or criminal proceedings. Disclosure of any other information requested is voluntary, (and there will be no adverse effects if you elect not to disclose it) (but election not to disclose the information could ... ."

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SAMPLE PRIVACY ACT RECORD OF DISCLOSURE

THE ATTACHED RECORD CONTAINS PERSONAL INFORMATION CONCERNING AN INDIVIDUAL. USE AND DISCLOSURE THEREOF IS GOVERNED BY SECNAVINST 5211.5 (SERIES). UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION FROM THIS RECORD COULD SUBJECT THE DISCLOSER TO CRIMINAL PENALTIES.

INSTRUCTIONS: This sheet is to remain affixed as a permanent part of the record described below. An appropriate entry must be made below each time the record or any information from the record is viewed by, or furnished to, any person or agency, including the subject of the record, except: (1) disclosures to DOD personnel having a need to know in the performance of their official duties and (2) disclosure of items listed in subparagraph 7a(2) of SECNAVINST 5211.5 (series).

TITLE AND DESCRIPTION OF RECORD

NAME AND ADDRESS OF PERSON OR AGENCY TO WHOM DISCLOSED (AND SIGNATURE IF DISCLOSURE IS MADE IN PERSON)

DATE	PURPOSE OF DISCLOSURE

IMPORTANT - READ AND COMPLY WITH THIS PAGE

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SAMPLE WARNING ADVISEMENT ABOUT STATEMENTS REGARDING ORIGIN OF DISEASE OR INJURY

COMPLIANCE WITH SECTION 0220 OF THE JAGMAN

I, _____, have been advised that:

-questions have arisen concerning whether or not my injury/disease, sustained or discovered on _____ 20_____, was incurred in the line of duty or as a result of my own misconduct;

-in the event such injury/disease is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost;

-lost duty time will not count as creditable service for pay entitlement purposes;

-I may be required to forfeit some pay where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs;

-if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veterans' benefits;

-I may <u>not</u> be required to give a statement relating to the origin, incidence, or aggravation of any disease/injury that I may have.

I do/do not desire to submit a statement.

_____ _____

Date Signature

_____

Witness Signature

_____

Witness Name/Rate/Grade/Unit/Telephone Number

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SAMPLE DOCUMENTATION OF PRELIMINARY INQUIRY

(Date)

From: (Name and rank of individual conducting preliminary inquiry)
To: (Title of authority ordering preliminary inquiry)

Subj: PRELIMINARY INQUIRY INTO (DESCRIPTION OF INCIDENT)

Ref: (a) JAGMAN, Section 0204

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a) into (description of incident).

2. Personnel contacted: (List individuals with name, rank, title, unit, and telephone number).

3. Materials reviewed: (List documents, objects, materials, and tangibles reviewed and, if of probable evidentiary value, where stored together with name of responsible individual and that person's phone number).

4. Summary of findings: (Summary should not extend beyond one paragraph and should summarize both what is known and unknown about the event in question).

5. Recommendation: (Choose one: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry).

_____
Name, rank, unit, telephone

FIRST ENDORSEMENT

_____Concur with recommendation

_____Other: _____

_____

_____
Name, rank, unit, telephone

(Note: Attachments may be added to the report as desired.)

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CHAPTER III

COMPLAINTS OF WRONGS

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CHAPTER III

COMPLAINTS OF WRONGS

0301 PURPOSE

To establish procedures for preparing, submitting and processing complaints of wrongs against a complainant's commanding officer under Article 138, Uniform Code of Military Justice (UCMJ), and complaints of wrongs against a military superior, who is not the complainant's commanding officer, under Article 1150(4), U.S. Navy Regulations (1990).

0302 AUTHORITY

a. Article 138, UCMJ 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 officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon."

b. Article 1150, U.S. Navy Regulations (1990), states in part: "If any person in the Naval service considers him- or herself wronged by an act, omission, decision, or order of a person who is superior in rank, or command, that person shall not fail in maintaining a respectful bearing toward such superior, but may report the wrong to the proper authority for redress in the manner provided in this Article." For purposes of this chapter:

(1) An Article 1150 complaint of wrongs, which can only be filed against a superior who is not the complainant's commanding officer, shall be processed as follows:

(a) Where the respondent and complainant do not have the same commanding officer, an Article 1150 complaint shall follow the same procedures enumerated in this chapter for an Article 138 complaint, except that there is no requirement that the complainant seek redress in writing prior to submitting an 1150 complaint.

(b) Where the respondent and complainant have the same commanding officer, that commanding officer shall take final action on the Article 1150 complaint. It is neither desired nor required that the report be forwarded to the Secretary of the Navy in such a case. If the complainant is not satisfied with the resolution made by the commanding officer, an Article 138 complaint may be filed against that commanding officer.

(2) An Article 1150 complaint of wrongs shall be in the format specified in Appendix A-3-a of this Manual.

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(3) For processing Article 1150 complaints, substitute the words "superior" for the words "commanding officer" as they are used in this chapter.

0303 DEFINITIONS OF TERMS AND PHRASES USED IN THIS CHAPTER

a. Complaint of wrongs. A service member's formal request to superior authority for relief from a wrong committed against the member by a superior.

b. Commanding officer. For purposes of an Article 138 complaint, "commanding officer," as used in this chapter, means a commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization, or prescribed territorial area, to which complainant is assigned, that under official directives is recognized as a "command." See Para. 2a, part V, MCM. For complaints against a person filed under Article 1150, U.S. Navy Regulations (1990), references in this Chapter to a "commanding officer" respondent are to be read to refer equally to a respondent under Article 1150, a person who is superior in rank or command to the complainant but not his or her commanding officer.

c. Due application. A timely request to the commanding officer for redress of an alleged wrong committed or ratified by that person.

d. Respondent. The individual who committed the alleged wrong against complainant, and against whom the complaint of wrongs is made.

e. General court-martial convening authority (GCMCA). The officer next superior in the chain-of-command exercising general court-martial jurisdiction over the respondent at the time of the alleged wrong, except in cases forwarded to the Assistant Secretary of the Navy (M&RA) under this subsection. When the Chief of Naval Operations (CNO) or the Commandant of the Marine Corps (CMC) is the next superior officer in the chain-of-command exercising general court-martial jurisdiction over the respondent at the time of the alleged wrong, the Vice Chief of Naval Operations or the Assistant Commandant of the Marine Corps, respectively, shall act on the complaint as the GCMCA. In cases where the respondent is the CNO, the CMC, or a departmental level officer who does not report to either the CNO or CMC, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) will act as the GCMCA for the purpose of processing the complaint.

f. Wrong. Any act, omission, decision or order, except those excluded by subsection 0304, taken, caused, or ratified by a commanding officer, under color of that officer's military authority that:

(1) results in personal detriment, harm, or injury to a military subordinate; and

(2) is without statutory or regulatory basis, unauthorized, an abuse of discretion, arbitrary and capricious, unjust, or discriminatory.

g. Redress. Any lawful action by the commanding officer, the GCMCA, or any officer in the chain-of-command (see subsection 0305d) that restores to the complainant any rights, privileges, property or status he would have been

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entitled to had the wrong not occurred.

h. Examination into a complaint. An inquiry into all facts material to the complaint. This inquiry may take any form the GCMCA deems appropriate. See subsection 0307d.

i. True statement of the complaint, with the proceedings had thereon. A GCMCA's report to the Secretary of the Navy and response to the complainant, signed personally by the GCMCA. See subsections 0307j and k.

0304 COMPLAINTS NOT WITHIN THIS CHAPTER

a. Improper subject of a complaint of wrongs. The following actions are not proper subjects of a complaint of wrongs:

(1) actions, omissions, decisions, or orders that are not within the definition of a "wrong" in subsection 0303f;

(2) acts, omissions, decisions and orders not taken, caused or ratified by respondent;

(3) acts that are not final. Most recommendations are not final acts. When the recommendation itself is controlling, such as a recommendation for advancement or for a Navy Enlisted Classification (NEC) removal, it is a final act, and a proper subject of a complaint of wrongs. If a recommendation has been acted upon by another authority, the complaint of wrongs will be processed under subsection 0307c;

(4) general policies of the Department of Defense (DoD) and the Department of the Navy (DON), including the instructions and other documents promulgating such policies;

(5) the GCMCA's decisions and procedures on complaints of wrongs, except for failure to forward the complaint;

(6) complaints which may be redressed under other DON procedures that provide the complainant notice of the alleged wrongful act, a right to rebut or a hearing, as appropriate, and review by an authority superior to the officer taking the action. Such procedures include, but are not limited to:

(a) proceedings, findings, or final actions of boards convened under 10 U.S.C. §§ 1181 (Board to Consider Separation of Regular Officers for Substandard Performance) and 1182 (Board of Inquiry);

(b) nonjudicial punishment (NJP), court-martial, and administrative discharge procedures and results. However, the vacation of a suspended nonjudicial punishment is the proper subject of a complaint of wrongs as no other due process procedure exists to examine that action;

(c) detachment for cause proceedings;

(d) fitness report or evaluation review processes (e.g. Marine Corps Performance Evaluation Review Board (PERB); and

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(e) personnel detailing decisions in which the member has been afforded an opportunity for flag or general officer review.

b. Improper redress of a complaint of wrongs. The following actions may not be requested to redress a wrong:

(1) action against or on behalf of another person; or

(2) changes to military records, except as outlined below.

(a) A complaint of wrongs may NOT be used to modify a military record unless the service member initiates a complaint within 90 days after he knows of the record's submission for entry into the appropriate record or within 1 year after submission for entry into the appropriate record, whichever is earlier.

(b) In calculating these periods, the time from the date the complainant requested redress from the commanding officer to the day the complainant receives notice from the commanding officer of the disposition of the request for redress, is not counted.

0305 PARTICIPANTS TO A COMPLAINT OF WRONGS

a. Who may complain. At the time the complaint is submitted, the complainant must be:

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

(2) a drilling reservist, concerning a wrong alleged to have occurred while the complainant was a drilling reservist; or

(3) any reservist alleging a wrong by a commanding officer or another military superior while the respondent was acting in an official capacity.

b. Who may be the subject of a complaint. A complaint must be against a specific person, not a command or position. Any commanding officer, as defined in subsection 0303b, or superior may be the respondent to a complaint of wrongs. Neither the Secretary of the Navy, Under Secretary of the Navy, the General Counsel of the Navy, nor any of the civilian Assistant Secretaries or Deputy Assistant Secretaries, may be the respondent to a complaint of wrongs.

c. Who shall consider the complaint

(1) General rule. The GCMCA has the primary responsibility to investigate the complaint of wrongs, take action thereon, and submit a report of the proceedings to the Secretary of the Navy.

(2) Reassignment of complainant or respondent. If the complainant, respondent, or both, detach prior to the submission of a complaint of wrongs, the complaint will be forwarded to the GCMCA over the respondent at the time

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of the alleged wrong, via the complainant's current commanding officer and the respondent.

(3) Review of complaints by Region Commanders. A Region Commander will act as the GCMCA when that officer is the GCMCA over the respondent as defined in subsection 0303e, or if specifically requested and authorized in writing to do so by the original GCMCA over the respondent.

(a) The Region Commander and the GCMCA over the respondent will determine, on a case-by-case basis, whether it is appropriate for the Region Commander to act on a particular complaint of wrongs, considering such factors as: the geographic location of the respective commands; the effect of operational commitments on the GCMCA's ability to investigate the complaint adequately; the relative burden of assuming investigative cognizance; the relative seniority of the respondent and the Region Commander; and familiarity with the subject matter of a specific complaint. The GCMCA's letter requesting a Region Commander to act upon a complaint should detail the reasons for the request. A Region Commander may decline for appropriate reasons to act on a complaint.

(b) Ultimate responsibility for processing the complaint remains with the original GCMCA over the respondent. If the original GCMCA forwards a complaint to the Region Commander, the original GCMCA shall maintain a file on the complaint for 2 years. The file should include a copy of the GCMCA's written request to the Region Commander to act as the GCMCA, and a copy of the Region Commander's action. Once the Region Commander assumes cognizance over the matter, that officer acts independently and in the place of the original GCMCA, with the authority to grant any redress the original GCMCA may have ordered.

(4) Review of complaints from joint commands. Where the complainant is assigned to a joint command, and the GCMCA over the respondent is a member of another service, the complaint shall be forwarded to the GCMCA via the senior Naval officer in the joint command, the designated Navy or Marine Corps commanding officer of the command, or the cognizant Naval Region Commander, as appropriate. He shall review the complaint to determine whether it raises issues unique to the Naval service and addressable only under DON regulations and instructions. The GCMCA may, in such a circumstance, specifically request and authorize either the Naval Region Commander or the appropriate component commander to act on the case.

d. Authority of intermediate superior officers. An intermediate superior officer, subordinate to the GCMCA, to whom a complaint is forwarded, may comment on the merits of the complaint, add pertinent evidence, and, if empowered to do so, grant redress, noting such action on the record. In all cases, intermediate superior officers shall promptly forward the complaint to the GCMCA, and provide a copy of the endorsement to the complainant. See subsection 0306e.

0306 PROCEDURE

a. Request to commanding officer for redress. Before a complainant may submit a complaint of wrongs under Article 138, UCMJ, the complainant must

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request, in writing, that the commanding officer redress the wrong. The commanding officer must act upon this request for redress in a timely manner, ordinarily within 30 days, and notify the complainant in writing of the action taken. A complainant is not required to request a superior redress the wrong before submitting a complaint under Article 1150, U.S. Navy Regulations.

b. Time limitations. A complaint must be submitted within a reasonable time after discovery of the alleged wrong. Absent unusual circumstances, a complaint submitted more than 90 days after the complainant discovers the alleged wrong is untimely. The period during which the commanding officer is considering complainant's written request for redress under subsection 0306a is not included in this 90-day period. The GCMCA may deny relief solely because the complaint is untimely. See subsection 0307b(2). If, however, the GCMCA determines that unusual circumstances justify the delay in submission, the GCMCA may find that the complaint is timely and act on it.

c. Form of complaint. The complaint shall be submitted in the format provided at Appendix A-3-a. This form must be completed in its entirety, unless a particular subparagraph, such as that providing for an explanation for untimely submission, does not apply. The complaint must specify the wrongs alleged and specific redress requested, followed thereafter by explanatory information, if necessary. A complainant should submit all relevant evidence, including affidavits, statements, and documents, with the complaint as numbered enclosures.

d. Forwarding the complaint. The complainant shall forward the complaint to the GCMCA, via his current commanding officer and the respondent.

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

f. Respondent. The respondent shall complete his response to the complaint of wrongs and forward it, along with the complaint and endorsements, to the GCMCA within 10 working days after receipt of the complaint. If the response is not completed within 10 working days of receipt, the response shall explain the delay. Subject to applicable security of classified material instructions, the respondent must provide complainant with copies of his response, including enclosures. If a complaint of wrongs is received by the GCMCA without a response from the respondent, it must be forwarded to the respondent to provide a response prior to being considered by the GCMCA.

g. Withdrawal of complaint. A complainant may withdraw a complaint at any time. The withdrawal must be in writing and signed by the complainant. After notifying the Secretary of the Navy via the Office of the Judge Advocate General (OJAG), Administrative Law Division (Code 13), the GCMCA shall file the complaint and the withdrawal letter without further action, and maintain the file for two years from the date of withdrawal.

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h. Joinder. A complaint may not be joined with the complaints of other individuals. Similarly, each complaint may seek redress for the wrong(s) of only one respondent. If the complainant believes more than one respondent has committed a wrong, the complainant shall submit a separate complaint against each respondent.

i. Waiver of requirements. The GCMCA may waive any requirement in this chapter, except those that afford a benefit to the complainant, such as the right to receive copies of all endorsements and to rebut any adverse matter submitted to or discovered by the GCMCA or any intermediate endorsers. See subsection 0307e.

0307 CONSIDERATION OF THE COMPLAINT BY THE GCMCA

a. Review of the complaint. Immediately upon receipt, the GCMCA shall send a copy of the complaint, without enclosures, to the Secretary of the Navy via the Office of the Judge Advocate General (Code 13), 1322 Patterson Ave, SE, Suite 3000, Washington Navy Yard, DC 20374-5066. The GCMCA shall review the complaint to ensure that:

(1) the complainant has requested redress from the respondent, if filed under Article 138, UCMJ (see subsection 0306a);

(2) the complaint is timely (see subsection 0306b);

(3) the complaint is complete (see subsections 0306c);

(4) the complaint has been properly forwarded (see subsection 0306d);

(5) the respondent has responded to the complaint (see subsection 0306f)

(6) the complaint does not join more than one complainant or more than one respondent (see subsection 0306h);

(7) the alleged wrong is a wrong and a proper subject of a complaint of wrongs (see subsections 0303f and 0304a); and

(8) the requested redress is proper (see subsection 0304b).

A checklist to assist in this review is provided at Appendix A-3-b.

b. Improper or defective complaints

(1) If the complaint fails to satisfy the requirements of subsections 0305a or b, does not allege a wrong which is a proper subject of a complaint of wrongs, or makes no proper request for relief, the GCMCA shall return the complaint to the complainant with an explanation as to why it is outside the scope of this chapter. If appropriate, the GCMCA should inform the complainant about other channels available to resolve the alleged wrong. The GCMCA shall forward a copy of the complaint and the letter to the complainant to the Secretary of the Navy via OJAG (Code 13).

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(2) If the complaint is incomplete or otherwise fails to satisfy the requirements of subsections 0306a, b, c, d, or h, the GCMCA shall, unless the deficiency is waived under subsection 0306i, return the complaint to the complainant with an explanation. The GCMCA shall forward a copy of the complaint and the letter to the complainant to the Secretary of the Navy via OJAG (Code 13).

c. Complaints alleging recommendations as wrongs. If a complaint names a respondent who made a recommendation that was forwarded to another officer for final action, and that action has been completed, the officer who approved or acted on the recommendation in question shall be substituted as respondent in place of the original respondent. The complaint shall be forwarded, via the GCMCA over the original respondent and via the substituted respondent, to the GCMCA over that substituted respondent. That GCMCA will review all actions taken and grant or deny redress in accordance with this chapter.

d. Inquiry. If the complaint is not improper or defective, the GCMCA shall inquire into its allegations.

(1) The extent and nature of such inquiry is within the GCMCA's discretion, and depends upon the seriousness of the allegations, the extent of the investigation conducted by the chain-of-command subordinate to the GCMCA, the available time, and the exigencies of operations. The GCMCA may appoint an investigating officer to inquire into the complaint.

(2) The GCMCA should review chapter II, chapter V and SECNAVINST 5211.5 (series) to determine whether Privacy Act statements are required.

(3) The GCMCA may request a complainant submit additional explanatory statements or other relevant documents.

(4) Certain complaints may involve matters that are complex or technical and require expert evaluation. In such cases, the GCMCA may seek expert evaluation from other Naval organizations or commands.

e. Complainant's rebuttal and notifications

(1) Prior to taking final action on a complaint, and subject to applicable security of classified material instructions, the GCMCA shall:

(a) ensure that the complainant has been provided a copy of all endorsements and enclosures forwarded with the complaint, as well as any evidence developed by the GCMCA's inquiry, and

(b) inform the complainant of the opportunity to rebut any matter contained therein within 10 working days. See Appendix A-3-c of this Manual.

(2) If the respondent or intermediate endorsers provide anything more than plain endorsements, for example, "forwarded," "forwarded for action as appropriate," or "forwarded recommending denial," in forwarding either the original complaint or the rebuttal, the GCMCA shall provide the complainant with a copy of all materials received and inform the complainant of the opportunity to rebut any matters contained therein. See Appendix A-3-c of this Manual.

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(3) The complainant shall submit his rebuttal to the GCMCA, via his commanding officer and the respondent.

f. Time limitations. Except in unusual circumstances, the GCMCA shall act on the complaint within 90 days of receipt. If the GCMCA action is not completed within 90 days of receipt, the report to the Secretary of the Navy shall explain the delay.

g. Delay due to separate inquiry. The GCMCA may delay the examination into a complaint if there is an ongoing independent inquiry or proceeding that is reasonably likely to result in clarification of the issues or redress of the alleged wrong. Such delay should not ordinarily extend beyond 10 days after action is completed in the related procedure, or beyond 120 days from the date the GCMCA receives the complaint, whichever is earlier.

h. Personal action by GCMCA. The GCMCA has primary responsibility for acting on the complaint. See subsection 0305c. The GCMCA may not delegate such authority to a subordinate command or individual. The report submitted to the Secretary of the Navy and the response to the complainant, if by separate correspondence, must be signed personally by the GCMCA, or, in that officer's absence, by the officer officially acting in such capacity, with the signature block so indicating.

i. Redress

(1) If the GCMCA determines the complaint is without merit, the GCMCA shall deny redress.

(2) If the GCMCA determines the complaint has merit, the GCMCA shall grant such redress as is appropriate and within his authority. In certain situations, a complaint may have merit; however, redress may not be available, appropriate, or proper within the context of a complaint of wrongs. In such cases the GCMCA should acknowledge the merit of the complaint, even if relief is denied.

(3) If the GCMCA determines the complaint has merit, but cannot actually effect the appropriate redress, the GCMCA shall forward the file to the Secretary of the Navy via the officer who can effect it, requesting that the specific relief be granted. The officer so requested shall effect the relief, unless the officer determines that the relief requested is not permitted by current regulations or is otherwise prohibited by law or policy. In such cases, the officer may delay compliance with the request until the final review and direction by the Secretary of the Navy. In such cases, the officer's endorsement shall set out the precise reasons the requested relief has been delayed.

j. Preparation and forwarding of GCMCA's report. In all cases, the GCMCA shall prepare and forward to the Secretary of the Navy, via OJAG (Code 13), a report on the complaint. Marine Corps activities will include the Commandant of the Marine Corps (Code JA) as a via addressee. The report should be in the format provided in Appendix A-3-d in this Manual, and include the complaint, all endorsements and enclosures, and any pertinent investigations. At a minimum, it should provide adequate facts to support the GCMCA's conclusion,

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contain enough detail to allow Secretarial review, and identify a point of contact. The report should also include the signed GCMCA checklist found at Appendix A-3-b in this Manual.

k. Written response to complainant. The GCMCA shall advise the complainant in writing of the action taken on the complaint. The letter shall specifically indicate which of the complainant's allegations have merit and which are without merit and shall either specify the relief granted or expressly deny the requested relief. See Appendix A-3-e. The GCMCA may satisfy this requirement by providing the complainant a copy of the GCMCA's report to the Secretary of the Navy, without enclosures, prepared in accordance with the requirements of this section and subsection 0307j.

0308 ENDORSEMENTS BY OFFICERS SENIOR IN THE CHAIN-OF-COMMAND TO THE GCMCA

Officers senior in the chain-of-command to the GCMCA, who themselves exercise general court-martial jurisdiction, may require subordinate commanders to submit the GCMCA's report via them. Such officers may make comments or recommendations concerning the report to the Secretary of the Navy, but they may not modify in any manner the report of the GCMCA.

0309 ACTION BY THE JUDGE ADVOCATE GENERAL

a. When complaint has been acted upon by GCMCA. Upon receipt of the GCMCA's report to the Secretary of the Navy, the JAG shall ensure that there has been substantial compliance with Article 138, UCMJ, or Article 1150, U.S. Navy Regulations (1990), and this chapter. The JAG has delegated this responsibility to OJAG (Code 13).

(1) If there has not been substantial compliance, OJAG (Code 13) shall return the file to the GCMCA for additional investigation or further action.

(2) If there has been substantial compliance, OJAG (Code 13) shall forward the complaint, with the actions thereon, to the Secretary of the Navy, with appropriate evaluations and recommendations, within 120 days of receipt of a complete report from the GCMCA.

b. When the Assistant Secretary of the Navy (M&RA) is the GCMCA. OJAG (Code 13) shall provide legal advice to the Assistant Secretary of the Navy (M&RA) when the Assistant Secretary of the Navy (M&RA) is the GCMCA for the purposes of acting upon a complaint pursuant to section 0303e.

c. Referral to the General Counsel of the Navy. When the JAG or an officer within his chain-of-command is the GCMCA or respondent, or when OJAG (Code 13) has provided legal advice under subsection 0309b, the Secretary of the Navy may refer the case to the General Counsel of the Navy for formal evaluation and recommendations under this section.

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0310 REVIEW BY THE SECRETARY OF THE NAVY

a. Scope. The Secretary of the Navy will review the action of the GCMCA. The standard for review is whether the GCMCA committed an abuse of discretion.

b. Action where redress was granted. The Secretary of the Navy may set aside actions favorable to the complainant only if such redress was beyond the statutory or regulatory authority of the officer granting the redress.

c. Action where redress was denied. The Secretary of the Navy may order further proceedings in the matter, or direct that all or a portion of the requested redress, or other appropriate redress, be granted.

d. Notification and finality. Upon review of a complaint, the Secretary of the Navy shall notify the complainant of the final action taken. Upon final secretarial action the complainant will have exhausted his administrative remedies under Article 138, UCMJ, or Article 1150, U.S. Navy Regulations (1990), as the case may be.

e. Other remedies. Exhaustion of remedies under Article 138, UCMJ, and Article 1150, U.S. Navy Regulations (1990), does not affect remedies that may be available under other statutes or regulations, including petitions to the Board for Correction of Naval Records.

f. Delegation. The Secretary of the Navy may delegate any of the responsibilities under this chapter to the Assistant Secretary of the Navy (M&RA), except when the Assistant Secretary of the Navy (M&RA) has acted as the GCMCA. The Secretary or the Assistant Secretary of the Navy (M&RA) may delegate any of the responsibilities under this chapter to an appropriate Deputy Assistant Secretary of the Navy, or to the JAG. Actions taken pursuant to this chapter by the Assistant Secretary of the Navy (M&RA), a Deputy Assistant Secretary of the Navy, or the JAG shall be as effective as if done personally by the Secretary of the Navy.

0311 REVIEW BY THE SECRETARY OF THE NAVY OF FORMAL EQUAL OPPORTUNITY OR SEXUAL HARASSMENT COMPLAINTS

When final review by the Secretary of the Navy of a formal equal opportunity or sexual harassment complaint is requested per Department of the Navy regulations, the procedures found in sections 0308 through 0310 of this chapter will apply. The request for final review by the Secretary of the Navy must be forwarded via the appellant's commanding officer and the GCMCA who conducted the initial review of the formal complaint.

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SAMPLE COMPLAINT

Date

From: (Rank, Name, SSN/Designator)
To: (GCMCA over respondent at the time of the alleged wrong)
Via: (1) (complainant's current commanding officer, if needed)
(2) (Respondent)
(3) (other intermediate superiors in chain-of-command prior to GCMCA)

Subj: COMPLAINT OF WRONGS UNDER (choose ARTICLE 138, UCMJ or 1150, U.S. NAVY REGULATIONS)

Ref: (a) (choose Article 138, UCMJ or Article 1150, U.S. Navy Regulations (1990))
(b) JAGMAN, Chapter III

Encl: (1) (list individually all documents enclosed with the complaint to support the complaint, including written request for redress, response to request for redress)

1. This complaint of wrongs, under reference (a), is submitted in compliance with reference (b).

2. COMPLAINANT: (person making the complaint)

a. Rank, name, SS#, designator:

b. Current command:

c. Command at time of alleged wrong:

d. EAOS/EAS/PCS/Separation/Retirement Date: (list date(s) as appropriate)

e. Permanent home address: (place where correspondence should be forwarded upon separation from active duty)

3. RESPONDENT: (person against whom complaint is made)

a. Rank and name:

b. Organization: (title/position and current command, and if different, provide same information for respondent at the time of the alleged wrong)

4. COMPLAINT: (explain what happened and how it adversely affected you personally)

a. Date wrong discovered:

b. Date written request for redress was submitted:

c. Date answer to request for redress was received:

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d. Number of days between wrong and submission of complaint: (difference between date in block 4a above and date this form is submitted, excluding the period respondent considered the written request for redress, which can be determined from blocks 4b and 4c above; if complaint is submitted more than 90 days after discovery of the wrong, the delay must be explained in block 4e below)

e. Explanation of delay in submission:

f. Specific nature of wrong: (include date and place of wrong)

5. RELIEF REQUESTED: (relief must be personal in nature and directly connected to the wrong alleged in block f above; it may not include, for example, a demand for public apology or initiation of action against another)

a. (list each relief requested)

6. I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND THIS COMPLAINT IS SUBMITTED PER THE GUIDELINES AND PROCEDURAL REQUIREMENTS IN CHAPTER III, MANUAL OF THE JUDGE ADVOCATE GENERAL.

SIGNATURE OF COMPLAINANT: _____ Date: _____

WITNESS: _____ Date: _____

PRIVACY ACT STATEMENT

1. Authority. 10 U.S.C. § 501 (2006); 10 U.S.C. § 938 (2006).

2. Principal purpose(s). Used by command authorities and the Office of the Judge Advocate General (OJAG) to review, take action, and make recommendations to the Secretary of the Navy on Article 138, UCMJ, and Article 1150, U.S. Navy Regulations(1990), complaints of wrong.

3. Routine uses. The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation in the Federal Register apply.

4. Mandatory or voluntary disclosure and effect on individual not providing information. Providing requested information is voluntary; however, failure to do so may result in delayed command action and JAG review, or the inability to notify complainant of the Secretary's decision.

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COMPLAINT OF WRONG PROCESSING CHECKLIST FOR GCMCA

Case name: _____
All references are to the JAGMAN, Chapter III unless otherwise noted.

COMPLAINT

☐ Complaint is properly forwarded? (§ 0306d)*
- ☐ Addressed to proper GCMCA, via intermediate endorsers, including respondent. If not, readdress and forward properly.

☐ Is respondent the proper respondent? (§ 0305b/NAVREGS 1150)**
- ☐ If 138, respondent was complainant's CO at the time of the complained of actions. (§ 0303b) If not, process as 1150 or return under § 0307b(1), as appropriate.
- ☐ If 1150 and respondent and complainant have the same commanding officer, then it is a "true 1150"and no report to SECNAV is required. (§ 0302b(1)(b)) All other 1150's are processed using 138 rules.
- ☐ See § 0305c(2) if one of the parties has transferred since the alleged wrong.

☐ Is complainant a proper complainant? (§ 0305a) If not, see § 0307b(1).**

☐ Complainant submitted written request for redress to respondent prior to submitting Art 138 complaint? (§ 0306a) If not, complaint may be returned to complainant in accordance with 0307b(2).* This does not apply to 1150s.

☐ Complaint is timely, or late submission justified? (§ 0306b) If not, complaint may be returned to complainant in accordance with § 0307b(2).*

☐ Complainant does not join more than one respondent? (§ 0306h) If he does, complaint may be returned to complainant in accordance with § 0307b(2).*

☐ Complaint does not join more than one complainant? (§ 0306h) If it does, complaint may be returned to complainant in accordance with § 0307b(2).*

☐ Complaint is in the proper format? (§ 0306c, Appendix A-3-a) If not, obtain information and include in GCMCA's action or the complaint may be returned to complainant in accordance with § 0307b(2).*
- ☐ Includes complainant's and respondent's personal information?
- ☐ Includes date wrong discovered and number of days between discovery of wrong and complaint submission?
- ☐ Explains delay, if applicable?
- ☐ Complaint complete with all enclosures/endorsements?
- ☐ Certified complaint to be "true and correct" and is signed, witnessed, and dated?

☐ Complaint alleges a wrong that is a proper subject of a complaint of wrongs? (§§ 0303f, 0304a)**
- ☐ Not recommendations (unless controlling, e.g. advancement recommendations, NEC removal)?
- ☐ Not general policies of DON?
- ☐ Not wrongs that have another DON procedure that provides notice, right to rebut or hearing, and review by superior; includes adseps, BOIs, NJP, courts-martial, DFC.

☐ Complaint makes a proper request for relief? (§ 0303g and 0304b)**

* Defect may be waived by GCMCA.
** Defect **may not** be waived by GCMCA and requires finding that particular allegation/redress is not cognizable.

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NOTE: FOR THOSE DEFECTS THAT MAY BE WAIVED BY GCMCA, FAILURE TO RETURN THE COMPLAINT TO COMPLAINANT AND/OR ADDRESSING COMPLAINT ON THE MERITS IS CONSIDERED A WAIVER OF THE DEFECTS.

GCMCA ACTION

☐ Advance copy provided to OJAG Code 13? (§ 0307a)

☐ Complainant provided a copy of all endorsements and enclosures? (§ 0307e)

☐ Complainant given opportunity to rebut endorsements or evidence developed by the GCMCA's inquiry using A-3-c? (§ 0307e)

☐ Is this command the proper GCMCA? (§ 0305c)
- ☐ If Region Commander is acting as GCMCA, written request from original GCMCA must be included.

☐ Has complaint been withdrawn by complainant? (§ 0306g)
- ☐ Signed withdrawal letter forwarded to OJAG Code 13 with notice of withdrawal to SECNAV.

☐ If complaint returned to complainant because it is incomplete or otherwise procedurally deficient, has complainant been provided with an explanation for return and copies forwarded to SECNAV via OJAG Code 13? (§ 0307b)

☐ GCMCA's action completed within 90 days of receiving complaint? (§ 0307f)
- ☐ Delay must be explained in letter to SECNAV.

☐ Report to SECNAV signed personally by GCMCA or official "Acting" (not "by direction")? (§ 0307h)

☐ If GCMCA cannot effect redress granted, file forwarded to SECNAV via officer who may effectuate redress (e.g., CNP)? (§ 0307i(3))

☐ Report to SECNAV in proper format, including complaint and all enclosures and endorsements? (§ 0307j) Report must discuss each allegation of wrong and conclude:
- ☐ whether it is cognizable, and if it is cognizable
- ☐ whether it is with or without merit, and if the allegation has merit
- ☐ whether relief is appropriate.

☐ Complainant advised in writing, signed personally by GCMCA or official "Acting" (not "by direction"), of action on complaint? (§ 0307k) Note: this requirement may be satisfied by sending complainant copy of report to SECNAV.

☐ For USMC commands, report to SECNAV sent via Commandant of the Marine Corps (JAR). (§ 0307j)

_____
Signed by reviewing official

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GCMCA NOTICE OF RIGHT TO REBUT

From: (General Court-Martial Convening Authority)
To: (Complainant)
Via: (Commanding Officer, _____)

Subj: OPPORTUNITY TO REBUT ADVERSE MATTER RELATING TO THE COMPLAINT OF WRONGS UNDER (ARTICLE 138, UCMJ or ARTICLE 1150, U.S. NAVY REGULATIONS (1990)) BY (COMPLAINANT)

Ref: (a) JAGMAN, Chapter III

Encl: (1) (identify documents)

1. As the officer exercising general court-martial jurisdiction over the respondent under reference (a), I am investigating and reviewing your complaint and the endorsements to it.

2. Enclosure(s) (1) - (x) contain(s) matter which may be considered adverse to your case. In accordance with section 0307e of reference (a), enclosures (1) - (x) are forwarded for your review and possible rebuttal. If you desire to submit any matters in rebuttal, you must do so, in writing, via your commanding officer and the respondent, by (date certain, allowing at least 10 working days). After that date, I will complete my action on your complaint.

(Name of GCMCA)

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GCMCA LETTER TO SECNAV

From: (General Court-Martial Convening Authority)
To: Secretary of the Navy
Via: Office of the Judge Advocate General (Code 13)

Subj: COMPLAINT OF WRONGS UNDER (ARTICLE 138, UCMJ orArticle 1150, U.S. NAVY REGULATIONS (1990)), BY (Rank/Rate) (Name)(Service)

Ref: (a) (Article 138, UCMJ or Article 1150, U.S. Navy Regulations, (1990))
(b) JAGMAN, Chapter III

Encl: (1) Original complaint with enclosures and endorsements
(2) Copy of GCMCA's letter to complainant
(3)-(?) (related documents, reports, and investigations)

1. Per references (a) and (b), enclosures (1) through (x) are forwarded.

2. In enclosure (1), (complainant) makes the following allegations:

(a) - (x). (Specifically list each separate allegation.)

3. Regarding the allegations in paragraph 2 above, I have made the following determinations:

(a) - (x). (A determination must indicate whether each allegation has merit or is without merit. References to specific sections of the enclosures should be made where applicable.)

4. In enclosure (1), (complainant) requests the following relief:

(a) - (x). (Specifically list each element of relief requested.)

5. I have determined that (the following/no) relief is appropriate in this case. (If relief is granted, discuss the specifics thereof.)

6. My point of contact on this matter is (action officer). He/she may be reached at (commercial telephone number) or DSN (DSN number).

7. By the (original of enclosure (2)/or copy of this letter), the complainant has been advised of the action I have taken as the general courts-martial convening authority.

(PERSONALLY SIGNED BY THE GCMCA OR OFFICER ACTING IN SUCH CAPACITY-SEE SUBSECTION 0307h)

Copy to:
(previous endorsers)

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GCMCA LETTER TO COMPLAINANT

From: (General Court-Martial Convening Authority)
To: (Complainant)
Via: (Commanding Officer, _____)

Subj: COMPLAINT OF WRONGS UNDER (ARTICLE 138, UCMJ or ARTICLE 1150, U.S. NAVY REGULATIONS (1990)) BY (COMPLAINANT)

Ref: (a) (Article 138, UCMJ or Article 1150, U.S. Navy Regulations (1990))
(b) JAGMAN, Chapter III

1. As the general courts-martial convening authority over the respondent under references (a) and (b), I have reviewed your complaint and have conducted an appropriate inquiry regarding your allegations.

2. (Discuss allegations raised in the complaint.)

3. (Discuss results of inquiry and determination of whether allegations have merit or are without merit.)

4. (Discuss relief granted or state that relief is denied.)

5. (Additional discussion, including identifying other avenues of relief, as appropriate.)

6. As required by section 0307j of reference (b), I have forwarded a report of your complaint and the proceedings held thereon to the Secretary of the Navy, who will act as the final review authority in your case.

_____
(PERSONALLY SIGNED BY THE GCMCA OR
OFFICER ACTING IN SUCH CAPACITY-
SEE SUBSECTION 0307h)

Copy to:
OJAG, Code 13

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CHAPTER IV

ARTICLE 139 CLAIMS -- REDRESS OF DAMAGE TO PROPERTY

0401 SCOPE

0402 CLAIMS NOT COGNIZABLE

0403 LIMITATION ON CLAIMS

a. Time limitations
b. Acts of property owner
c. Only direct damages considered

0404 COMPLAINT BY THE INJURED PARTY AND INVESTIGATION

a. Contents of the claim
b. Misconduct by members of the command
c. Investigation
d. Recommendations
e. Judge advocate review
f. Notice

0405 ACTION WHERE OFFENDERS ARE MEMBERS OF SAME COMMAND

a. Action by commanding officer/general court-martial convening authority (GCMCA)
b. Charge against pay

0406 ACTION WHERE OFFENDERS ARE MEMBERS OF DIFFERENT COMMANDS

a. Action by common superior
b. Forwarding to OJAG

0407 RECONSIDERATION

a. Original action by GCMCA
b. Original action by OJAG

0408 EFFECT OF COURT-MARTIAL PROCEEDINGS

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CHAPTER IV

ARTICLE 139 CLAIMS -- REDRESS OF DAMAGE TO PROPERTY

0401 SCOPE

This chapter provides for assessments against the pay of members of the Naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the Naval service are payable under Article 139, Uniform Code of Military Justice (UCMJ), only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

0402 CLAIMS NOT COGNIZABLE

The following claims are not cognizable under this chapter.

a. Claims resulting from simple negligence.

b. Claims of subrogees.

c. Claims for personal injury or death.

d. Claims arising from acts or omissions within the scope of employment of the offender.

e. Claims for reimbursement for damage, loss, or destruction of Government property.

f. Claims resulting from a breach of contractual or fiduciary duty, such as nonpayment of rent.

0403 LIMITATION ON CLAIMS

a. Time limitations. A claim must be submitted within 90 days of the incident.

b. Acts of property owner. When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss or damage of the property, assessments will not be made against members of the Naval service in excess of the amount for which they are found to be directly responsible, i.e., comparative responsibility for the loss will be the standard for determining financial responsibility.

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c. Only direct physical damage considered. Assessment will be made only for direct physical damage to the property. Indirect, remote, or inconsequential damage will not be considered.

0404 COMPLAINT BY THE INJURED PARTY AND INVESTIGATION

a. Contents of the claim. A claim shall contain a statement setting forth the amount of the claim, the facts and circumstances surrounding the claim, and any other information that will assist in the investigation and resolution of the matter. When there is more than one complaint resulting from a single incident, each claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized representative or agent.

b. Misconduct by members of the command. Where the claim alleges misconduct by members of the command, the commanding officer to whom the claim is submitted shall convene an investigation under this Manual to inquire into the matter. Where a complaint is received by a commanding officer to whose command the alleged offenders do not report, he shall forward the claim and other pertinent information about the matter to the member's commanding officer who will convene an investigation into the incident. Where the command of the alleged offenders cannot be determined, the claim and supporting materials shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

c. Investigation. The investigation shall inquire into the circumstances surrounding the claim, gather all relevant information about the matter, answering the who, what, where, when, why, and how questions, and make findings and opinions, as appropriate, about the validity of the claim under Article 139, UCMJ, and these regulations. The investigation shall determine the amount of damage suffered by the property owner. The standard of proof for a finding of pecuniary liability and for the amount to be assessed under Article 139, UCMJ, is preponderance of the evidence. See section 0214 of this Manual for an explanation of the various standards of proof.

d. Recommendations. The investigation shall make recommendations about the amount to be assessed against the pay of the responsible parties. If more than one person is found responsible, recommendations shall be made about the assessments against each individual.

e. Judge advocate review. Prior to action by the commanding officer, the investigating officer's findings and recommendations shall be forwarded to a judge advocate to review for legal sufficiency and compliance with this Chapter. The judge advocate shall advise whether the evidence supports the findings and if the investigation's recommendations are consistent with the findings. The judge advocate shall return the report to the investigating officer for appropriate disposition consistent with this Chapter or, if needed, for further investigation or correction. The judge advocate review will be included in the investigation file for the commanding officer's consideration when determining liability. The review is not binding on the commanding officer.

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f. Notice. Prior to forwarding to the commanding officer any investigation where a recommendation of pecuniary liability is made, the investigating officer will forward a copy of the investigation to the member who has been assessed pecuniary liability. The member will be advised that he has 20 days to submit a statement or additional information on the incident through the investigating officer to the commanding officer.

0405 ACTION WHERE OFFENDERS ARE MEMBERS OF SAME COMMAND

a. Action by commanding officer/general court-martial convening authority (GCMCA)

(1) If the commanding officer is not a GCMCA, the claim, the investigative report, offender's statement (if any), and the commanding officer's recommendations thereon shall be forwarded to the general court-martial convening authority (GCMCA) over the command for review and action on the claim, in accordance with section 0406a(2) below.

(2) The GCMCA shall review the entire claim file and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage by members of the command. If the GCMCA finds the claim payable under these regulations, he shall fix the amount to be assessed against the member. The GCMCA shall promptly notify the claimant and member of the proposed action to be taken on the claim and inform both of the right to request reconsideration under section 0408. If the GCMACA is not also the offender's commanding officer, the GCMCA shall direct the commanding officer to effect the proposed action.

b. Charge against pay. Where the amount does not exceed $5,000.00, the amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offenders and the amounts so collected will be paid to the claimant. Where the amount exceeds $5,000.00, the claim, the investigative report, and the commanding officer's recommendation shall be forwarded for review prior to checkage to the Office of the Judge Advocate General (OJAG) (Code 15), or Headquarters, U.S. Marine Corps (JAR), as appropriate. The amount charged in any single month against the pay of offenders shall not exceed one-half of basic pay, as defined in Rule for Courts-Martial 1003(b)(2), Manual for Courts-Martial. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

0406 ACTION WHERE OFFENDERS ARE MEMBERS OF DIFFERENT COMMANDS

a. Action by common superior. The investigative report shall be forwarded to the common superior GCMCA over the commands to which the alleged offenders are assigned. That common superior GCMCA shall take the actions of the GCMCA described in section 0405 above.

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b. Forwarding to OJAG. Where it is not practical or possible to carry out the procedure in subsection 0406a above, the investigative report(s) shall be forwarded to OJAG (Code 15), who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by OJAG (Code 15).

0407 RECONSIDERATION

a. Original action by GCMCA. A claimant or member who has been assessed pecuniary liability may request a reconsideration of the decision. A request for reconsideration must be submitted to the GCMCA that took action, within 5 days of receipt of the notice of the GCMCA's decision. Upon receipt of a request for reconsideration, the GCMCA may reopen the investigation or take any other action that the GCMCA believes is necessary in the interests of justice. If the GCMCA contemplates modifying the decision, the GCMCA will provide all parties to the claim with notice and an opportunity to respond. The GCMCA will record the basis upon which the decision is modified and notify the parties that the claim has been forward to OJAG (Code 15) for review and final action. The GCMCA shall forward his endorsement along with a copy of the claim, the request for reconsideration, and the investigative report to the Office of the Judge Advocate General, 1322 Patterson Avenue, SE, Suite 3000, Code 15, Washington Navy Yard, DC 20374-5066, for review and final action. The endorsement will state the claimant's name, the offender's name, the convening authority, the amount assessed, and the original determination, as well as the GCMCA's recommendation for action to be taken on the request for reconsideration. In the event of a request for reconsideration, the imposition of the GCMCA's decision will be held in abeyance pending final action by OJAG (Code 15). If it appears that good cause exists that would make it impracticable for a request for reconsideration to be submitted within five days, the GCMCA may, in his discretion, grant an extension of time, as appropriate. The GCMCA's decision on extensions is final.

b. Original action by OJAG. A claimant or member who has been assessed pecuniary liability by OJAG may submit a request for reconsideration of the decision to OJAG (Code 15). A request for reconsideration must be submitted to OJAG (Code 15) within five days of receipt of the original decision. OJAG (Code 15) will take the same actions as the GCMCA outlined in section 0407a above.

0408 EFFECT OF COURT-MARTIAL PROCEEDINGS

Administrative action under these regulations is separate and distinct from, and is not affected by, any disciplinary action against the offender. The two proceedings are independent. The processing of the claim under Article 139, UCMJ, should not be delayed solely for the resolution of a pending court-martial. While acquittal or conviction of the alleged offender by court-martial is evidence for the administrative action, it is not determinative on the issue of responsibility for damages under these regulations. The GCMCA may, in the interest of justice, consider a request for reconsideration based upon the outcome of the court-martial submitted by a claimant or member who has been assessed pecuniary liability.

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CHAPTER V

RELEASE OF GOVERNMENT INFORMATION

0501 SCOPE

a. Overview. This chapter discusses the three principal types of requests for information or records likely to be received by Naval activities and the procedures to follow upon receipt of a request. It does not apply to routine Department of the Navy (DON) correspondence or to congressional inquiries, and does not supersede governing Naval and Department of Defense (DoD) regulations. Commands receiving a request for records or information from members of the public should examine the request and determine if it cites or implicates the Freedom of Information Act (FOIA), Privacy Act (PA), or related DON or DoD regulations. Records or information may also be requested for litigation purposes--often to bring suit against the Navy. The chapter does not apply to requests for prepublication review of documents. This chapter is designed to be a general reference guide and is only intended to augment the controlling instructions. Users must review the controlling directives for more detailed information, as well as the Navy FOIA and PA websites, http://foia.navy.mil and http://privacy.navy.mil.

b. FOIA requests. If the requester cites or implicates the Freedom of Information Act, 5 U.S.C. § 552, SECNAVINST 5720.42 (series), DODD 5400.7, or DODD 5400.7-R, refer to Part A of this chapter.

c. PA requests. If the requester cites the Privacy Act, 5 U.S.C. § 552a, SECNAVINST 5211.5 (series), DODD 5400.11, or requests information about himself retrievable by the requester's name or other personal identifier, refer to Part B of this chapter.

d. Requests for litigation purposes. If the requester states or it appears that the information is requested for litigation purposes, refer to Part C of this chapter.

PART A -- Freedom of Information Act (FOIA)

0502 POLICY

The FOIA, 5 U.S.C. § 552, generally provides that all persons, including citizens and residents of other countries, have a right of access to Federal agency records, unless such records are exempt from disclosure. SECNAVINST 5720.42 (series) contains DON policy guidance on FOIA. SECNAVINST 5720.42 (series) addresses FOIA exemptions, time limits for responses, formal and informal extension of time limits, appeals procedures, and fee schedules.

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0503 DEFINITIONS

a. Agency record

(1) An agency record includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of agency business and in the agency's control at the time the FOIA request is made.

(2) An agency record is not:

(a) Objects or Articles, such as structures, parts from wrecked aircraft and ships, furniture, paintings, sculpture, three-dimensional models, vehicles, or equipment.

(b) Anything not a tangible record, such as an individual's memory or oral communication.

(c) Computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of the agency.

(d) Personal records not subject to Navy creation or retention requirements, created or maintained primarily for a Navy employee's personal convenience, and not distributed to other agency employees for their official use. For example, a supervisor's personal notes on an employee's performance, not required to be maintained and used solely as a memory aid in preparing evaluations and then destroyed, is not an agency record.

b. FOIA request. A written request, either citing or reasonably implicating the FOIA, 5 U.S.C. § 552, SECNAVINST 5720.42 (series), DODD 5400.7, or DODD 5400.7-R. It must describe the record(s) requested sufficiently to enable knowledgeable Naval personnel to identify the desired records with a reasonable amount of effort. Also, the request must address the requester's willingness to pay fees.

c. Release authority. Commanding officers and heads of Navy and Marine Corps activities authorized to furnish records.

d. Initial denial authority (IDA). An official who may withhold records under FOIA, either in whole or in part, based on the FOIA exemptions. IDA's may also grant or deny requests for reductions or fee waivers. Generally, IDAs are general court-martial convening authorities (GCMCA). See paragraph 6e of SECNAVINST 5720.42 (series) for a list of IDAs.

0504 RESPONSIBILITIES

a. Minimum requirements. The minimum requirements for a FOIA request are: (1) the request cites or implicates the FOIA; (2) contains a reasonable description of the information or records requested; and (3) contains a clear statement of the requester's willingness to pay fees, a willingness to pay fees up to a stated amount, or a request for a fee waiver. If the FOIA

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request does not meet these requirements, the Naval activity should, within 20 working days, inform the requester of the contents of a proper request.

b. Identify the records requested. Commands must search their filing systems and existing retrieval systems if the description provided by the requester enables Naval personnel to locate the records with reasonable effort.

(1) FOIA does not authorize "fishing expeditions;" nor are commands required to respond to blanket requests for all documents. The Naval activity shall notify the requester if the description does not reasonably describe the records sought and provide guidance on the specificity required to begin a search. Commands must make reasonable efforts by manual or automated means to search for the requested records that are in electronic format. For additional guidance, see SECNAVINST 5720.42 (series).

(2) If the requested record was originated by another activity, the receiving activity shall not release or deny such records without consulting the other Naval activity. The receiving activity shall coordinate with that activity before referring the FOIA request and copies of the requested documents for direct response. See subparagraph 0504c. The requester shall be notified of this referral.

(3) A Naval activity does not have to create or compile a record. A record may be compiled if it is a more useful response to the requester, or a lessor burden to the Naval activity than providing existing records, and the requester does not object. Commands must provide a requested record in the form or format requested, if the record is reasonably reproducible in the form or format requested. Costs of creating or compiling a record may not be charged to the requester, unless such a fee is equal to or less than the fee which would be charged for providing the existing record.

(4) The 9 categories of records exempt from release under the FOIA are described in SECNAVINST 5720.42 (series). Commands that believe requested documents may be exempt from release should consult the IDA or legal advisor in their chain of command for guidance on whether to refer the documents for processing by the IDA and how to respond to the requester.

c. Requests requiring special handling. Detailed instructions for records requiring special handling are provided in SECNAVINST 5720.42 (series). The most common requests requiring special handling are briefly outlined below:

(1) Classified records. If the existence or nonexistence of the requested information is classified, the Naval activity shall refuse to confirm or deny its existence or nonexistence. If the documents requested are classified by another agency, contain information classified by another agency, or if the head of the agency is not the classifying authority, the agency shall refer the request and copies of the requested documents to the originating agency or classification authority.

(2) Naval Criminal Investigative Service reports. Requests should be forwarded to the Naval Criminal Investigative Service Headquarters (Code 00JF), 716 Sicard Street SE, Suite 2000, Washington Navy Yard D.C. 20388-5380,

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and the requester so notified.

(3) Courts-martial records. Requests should be referred to the Office of the Judge Advocate General (Code 40), 1322 Patterson Ave, SE, Suite 3000, Code 40, Washington Navy Yard, DC 20374-5066, and the requester so notified.

(4) JAGMAN investigations. Requests shall be forwarded to the following release authorities, depending upon the type of investigation convened:

(a) For a command investigation, to the general courts-martial convening authority (GCMCA) over the command convening the investigation.

(b) For a litigation-report investigation, to the Office of the Judge Advocate General (Code 15).

(c) For a court or board of inquiry, to the Echelon II commander over the command convening the court or board of inquiry.

(5) Mishap investigation reports. Requests should be forwarded to Commander, Naval Safety Center, Attn: Code 03, 375 A Street, Norfolk, VA 23511-5796, and the requester so notified.

(6) Nuclear and related information. FOIA requests for nuclear related information shall be processed under SECNAVINST 5510.36 (series). Dissemination of unclassified material on the physical protection of special nuclear material is prohibited when dissemination could reasonably be expected to have a significant adverse effect on the health and safety of the public, or the common defense and security, by significantly increasing the likelihood of the: (1) illegal production of nuclear weapons, or (2) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(7) Misdirected requests. Misdirected/misaddressed requests shall be promptly readdressed and forwarded to the cognizant or originating activity for action and the requester so notified.

d. Time limits. The responsible Naval activity has 20 working days from receipt to respond to a FOIA request. If the Naval activity cannot respond within 20 days, it may:

(1) Inform the requester of: (a) the reasons for the delay; (b) that the requester may treat the delay as a denial of the request if they choose; and (c) the requester's appeal rights. A formal extension of time requires the signature of an IDA; or

(2) Negotiate an informal extension of time with the requester that is mutually agreeable. This does not require the IDA's signature.

(3) In the case of a significant number of requests that preclude a response determination within 20 days, commands shall process the requests in a multi-track system based on the amount of time and work involved in processing the request, and whether the request qualifies for expedited processing. A multi-track system shall have, at a minimum, three tracks. These tracks shall consist of simple cases, complex cases, and cases that

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qualify for expedited processing. Within each track, all requests shall be processed on a first-in, first-out basis. See SECNAVINST 5720.42 (series) for further guidance on multi-track and expedited processing.

0505 MAILING LISTS

Most Naval activities receive FOIA requests for mailing lists--names and home addresses or names and duty addresses.

a. Requests for names and home addresses. Requests for mailing addresses and home addresses should be denied as a clearly unwarranted invasion of personal privacy. This includes requests for base quarters/housing addresses without the occupant's name.

b. Requests for names and duty addresses

(1) A FOIA request for a list of names and duty addresses of members attached to units that are stationed in foreign territories, routinely deployable, or sensitive must be denied as exempt from disclosure under FOIA exemption b(3) and 10 U.S.C. § 130b. Disclosure is a security threat to those members because it reveals information about their involvement in military actions, the type of Naval unit, and their presence or absence from their households. Release aids the targeting of members and their families by terrorists and other persons opposed to the national policy. Exceptions must be coordinated with Office of the Chief of Naval Operations (N09B30) or the Commandant of the Marine Corps (ARSE), as appropriate. Units covered are:

(a) Those outside the 50 states, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(b) Routinely deployable units that normally deploy from home port or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises, including routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force. It does not include ships undergoing extensive yard work or whose primary mission is support training, e.g. yard craft and auxiliary aircraft landing training ships.

(c) Units engaged in sensitive operations are those primarily involved in training for or conduct of classified missions, including units primarily involved in collecting, handling, disposing, or storing classified information or materials.

(2) Pursuant to DoD policy, lists of names and duty addresses, not covered by the above policy, should be withheld under FOIA exemptions (b)(2) and b(6).

0506 NONJUDICIAL PUNISHMENT (NJP) RESULTS

Information on NJP will not normally be disclosed to the public under FOIA. This is because the public interest in the routine administrative disposition of employee misconduct rarely outweighs the individual's privacy interest in

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the matter. See SECNAVINST 5720.42 (series). In order to protect the personal privacy of individuals receiving NJP, commands receiving requests for individual NJP records should forward the request to their cognizant IDA with the recommendation that the existence of the records be neither confirmed nor denied, except when the requester is the individual upon who NJP was imposed. In that situation, the request is processed under section 0513. Otherwise, disclosure should only be considered when the events leading to the NJP are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement, fraud, or misuse of Government property. In these circumstances, commands should consult with the legal advisor and public affairs officer in their chain of command. Publication of the results of NJP to the command, in accordance with section 0115 of this Manual, shall not be considered a disclosure as defined in section 0511 and is not controlled by this paragraph.

0507 ACTION BY RELEASE AUTHORITY

Release authorities shall take one of the following actions within 20 working days after receiving a FOIA request:

a. Records releasable in their entirety. If the requested records are releasable in their entirety, forward the requested records stating: whether fees were waived or reduced; what fees are due; or whether fees must be paid before the records are released.

b. Records not available. If the requested records are releasable in their entirety but not yet available, notify the requester that the request has been approved and the requested records will be forwarded by a specified date.

c. Evaluation of records. If the request for examination of records has been approved, notify the requester of the time and place.

d. Misaddressed request. If the request has been misaddressed or the records are properly held by another Naval activity, promptly refer the request and notify the requester.

e. Denial. If the request must be denied in whole or in part, advise the requester that the request has been referred to higher authority (provide name and address of IDA), for a release determination and direct response. The letter to the IDA shall include a copy of the request, a copy of the letter to the requester, all documents responsive to the request, and a recommendation as to partial/total denial with the rationale for the exemptions claimed. In this situation, the release authority will provide any releasable documents to the requester, and follow the referral procedure above for the documents to be withheld.

0508 ACTION BY THE INITIAL DENIAL AUTHORITY (IDA)

Denial procedures are provided in detail in SECNAVINST 5720.42 (series).

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0509 FEES

Enclosure (3) of SECNAVINST 5720.42 (series) contains fee guidelines.

PART B -- Privacy Act (PA)

0510 POLICY

The PA, 5 U.S.C. § 552a, applies to records in a system of records maintained by an agency from which information is normally retrieved by the person's name or other personal identifier, such as a social security number (SSN). The Act balances the Government's need to maintain information about individuals against the right of individuals to be protected from unwarranted invasions of their privacy by Government collection, maintenance, use, and disclosure of personal information. SECNAVINST 5211.5 (series) contains DON policy guidance on the Privacy Act and prescribes procedures for notifying individuals of a system of records pertaining to them, granting access to the subject of the records, reviewing requests to amend records, disclosing personal information to third parties, and safeguarding personal information.

0511 DEFINITIONS

a. Agency. The Department of Defense is the agency; all Naval activities are subject to the PA.

b. Individual. A living U.S. citizen or alien lawfully admitted for permanent residence; or a member of the U.S. Navy, including a minor. The legal guardian of an individual or the parent of a minor has the same rights as the individual.

c. Record. Any item, collection, or grouping of information about an individual maintained by an agency by name or personal identifier. Purely private notes, such as personal memory refreshers, not required or used by the agency are not agency records.

d. System of records. A group of records from which information is retrieved by name or personal identifier. The capability of retrieving a record by name or personal identifier, such as by a computer search, does not create a system of records subject to the PA.

e. Access. An individual or authorized agent, reviewing or obtaining copies of records, pertaining to himself or herself, that are part of a system of records.

f. Disclosure. Conveying information from a PA record to an organization or individual, not the subject of the record.

g. Official use. Use by officials of the DoD and DON with a demonstrated need for any record to complete a mission or function of the Department. Official use also includes disclosure that is prescribed or authorized by a regulation.

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h. Routine use. Disclosure of a record outside the DoD for a use compatible with the purpose for which the information was collected and maintained. The routine use must be stated in the published PA system notice.

i. System manager. Official with responsibility for records in a system, as indicated in the published PA system notice.

0512 RESPONSIBILITIES

a. CNO (DNS-36). As the official responsible for developing and coordinating DON PA policy, DNS-36 publishes Privacy Act systems notices in the Federal Register and at http://privacy.navy.mil. Proposed new, altered, or amended systems of records shall be submitted to Chief of Naval Operations (DNS-36) or Commandant of the Marine Corps (HQMC(ARSF)), as appropriate.

b. Exempt systems of records. DNS-36 must publish in the Federal Register a notice of exempt systems. There are two types of exempt records - those within a general exemption and those within a specific exemption.

(1) The general exemption excuses a system of records from most access provisions of the PA; it is available only for records maintained by the CIA or an agency whose principal function is law enforcement.

(2) The specific exemption applies to investigatory material compiled for law enforcement purposes not within the general exemption. Http://privacy.navy.mil lists exempt systems of records.

c. Denial authority. Only the head of the activity with cognizance over an exempt PA system of records has the authority to deny a request for access or amendment of a record.

d. Release authority. Officials with cognizance over a nonexempt PA system of records have the authority to release records to first-party requesters or their appropriately designated representatives. Such officials may also grant requests for notification or amendment.

0513 PROCEDURES

a. Requesting individual. The requesting individual should request the records in writing, providing the name of the system of records, his full name, SSN, and a signed release, if necessary. The system manager or other custodial official shall inform the requester of additional information necessary to consider the request.

b. Consultation. Because the protection of personally identifying information is a rapidly evolving body of law subject to ever-increasing public and Congressional scrutiny, officials with release or denial authority should refer to the latest version of SECNAVINST 5211.5 (series) for detailed guidance on release decisions, and consult with their staff judge advocate.

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c. Blanket requests. Requests seeking notification or access to all Navy systems of records shall not be honored. For example, the requester may seek all records maintained by the requester's name or personal identifier. A command receiving such a request should inform the requester that:

(1) Requests for notification and/or access must be made to the system manager for the record system, as identified in the Federal Register, and

(2) Requests must either designate the particular system to be searched or provide sufficient information for the system manager to determine the appropriate system.

d. Additional information necessary. The system manager or other custodial official shall inform the requester of additional information necessary to consider the request.

e. Time limits. A request to amend a record shall be acknowledged within 10 working days. Acknowledgement must specifically identify the request and provide an expected date of notification that amendment is completed. Amendments completed within 10 days do not require separate acknowledgement. Action should be completed within 30 days of receipt by the cognizant office.

f. Granting access. If access should be granted, the system manager or other custodial official shall so inform the requester in writing and:

(1) Inform the requester where and when the records may be viewed, that a person may accompany the requester, and a copy of the record may be provided upon agreement to pay duplication fees, or

(2) Furnish a copy of the record, if the requester asked for a copy of the record and agreed to pay duplication fees, unless fees were waived.

g. Granting amendment. A request to amend a record should be granted when information from the requester and all other reasonably available related records indicate that the requested amendment will make the record accurate, relevant, timely, and complete.

(1) If amendment is warranted, the system manager shall promptly amend the record and notify the requester in writing.

(2) The system manager shall notify previous recipients of the record for whom a disclosure accounting was made that the record was amended and of the substance of the correction.

(3) When an individual files a statement of dispute after a request for amendment has been denied, the system manager shall annotate the record so the dispute is apparent. The system manager shall notify previous recipients of the record for whom a disclosure accounting was made that the record has been disputed, provide a copy of the individual's statement, and if appropriate, provide a brief statement why the record was not amended. For additional guidance, see SECNAVINST 5211.5 (series).

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h. Denying a request for notification, access, or amendment. Denial of an individual's request for notification, access, or amendment must be in accordance with SECNAVINST 5211.5 (series). Generally, access will be granted to an individual unless the system of records has been exempted from access or the particular information requested has been compiled in reasonable anticipation of litigation. If the system manager or other custodial official determines the request should be denied, in whole or in part, that officer shall forward the request to the cognizant denial authority with a copy of the requested record, and recommendations as to the denial.

i. Denial authority. Officials with denial authority are listed in and shall follow the SECNAVINST 5211.5 (series) process appropriate for the type of request.

0514 DISCLOSURE TO OTHERS

Generally, records in a PA system of records may not be disclosed except pursuant to a written request of the subject of the record or with the prior written consent of the subject of the record. A complete discussion of exceptions to this general rule is SECNAVINST 5211.5 (series).

0515 DISCLOSURE ACCOUNTING

a. A disclosure accounting for each record disclosed from a system of records must be made by the activity maintaining the record, except for:

(1) Intra-agency disclosures;

(2) Disclosures pursuant to FOIA;

(3) Disclosures to Congress or members of Congress; or

(4) Disclosures for statistical research.

b. For additional guidance, see http://privacy.navy.mil or SECNAVINST 5211.5 (series).

0516 COLLECTION OF INFORMATION

a. Personal information. Personal information is information private or intimate to the individual and not related solely to official functions. It ordinarily does not include information regarding an individual's act or omission directly related to official duties.

b. Collect from the individual. Personal information shall be collected to the maximum extent possible from the individual, except when:

(1) There is a need to ensure the accuracy of the information supplied by verifying the information through a third party.

(2) Information can only be obtained through a third party.

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(3) Obtaining information directly from the individual would involve exceptional practical difficulties or unreasonable cost.

c. PA statement. A PA statement must be provided when individuals supply personal information about themselves. The individual need not sign the PA statement. The PA statement must contain:

(1) Authority for the solicitation (statute or Executive Order);

(2) Purposes for which the information is used;

(3) Brief summary of routine uses for the information, as published in the Federal Register;

(4) Whether disclosure is mandatory or voluntary, and effects of nondisclosure; and

(5) Possible effects on the individual if the requested information is not provided.

d. SSNs. A PA statement must be provided when requesting an SSN. An SSN may be requested even if not required by Federal statute, if the individual is informed that disclosure is voluntary. Collection of SSNs is discouraged if another identifier would suffice.

0517 SAFEGUARDING PERSONAL INFORMATION

Every activity maintaining a system of records shall prevent unauthorized disclosures.

PART C -- Release of Official Information and Testimony for Litigation Purposes

0518 POLICY

Official documents and information should be made reasonably available for use in Federal courts, State courts, foreign courts, and other governmental proceedings, unless the information is classified, privileged, or otherwise protected from public disclosure. Requests for documents, testimony, depositions, or interviews of witnesses in connection with litigation shall be processed under SECNAVINST 5820.8 (series). Commands receiving a request for information for litigation purposes should immediately contact the staff judge advocate in their chain of command.

0519 RELATIONSHIP WITH FOIA AND THE PA

This section does not control releases under FOIA or PA, nor does it preclude treating any written request as a FOIA or PA request. If a FOIA or PA request pertains to litigation to which the U.S. is a present or potential party, the

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release authority should notify the Office of the Judge Advocate General (Code 14) or the Navy General Counsel, as appropriate. For additional guidance, see SECNAVINST 5820.8 (series). Requests for PA records must be accompanied by a written release from the subject of the record, a court order, or a subpoena signed by a judge of a court of competent jurisdiction. The release official must do a disclosure accounting.

0520 DEFINITIONS

a. Request or demand (legal process). Subpoena, order, or other request by a Federal, State, or foreign court of competent jurisdiction, by any agency thereof, or by any party or other person for production, disclosure, or release of official DoD information, or for appearance, deposition, or testimony of DON personnel as witnesses. The guidance set forth in this part, and SECNAVINST 5820.8 (series), does not apply to release of official information or testimony by DON personnel in the following situations:

(1) Before courts-martial or administrative proceedings convened or conducted by any DoD component;

(2) In response to requests by Federal Government counsel or counsel representing the interests of the U.S.;

(3) As required by the Defense Industrial Personnel Security Program under DODD 5220.6; and

(4) Release of JAGMAN investigations to next of kin, or their representatives, concerning deceased or incompetent Naval personnel.

b. DON personnel. Active duty and former military personnel of the Naval service, including retirees, personnel of other DoD components serving with a Naval component, Naval Academy midshipmen, present and former employees of the Navy and Marine Corps including non-appropriated fund employees, foreign nationals performing services for the Navy and Marine Corps overseas under provisions of Status of Forces Agreements, and other specific individuals or entities hired through contractual agreements.

c. Litigation. All pretrial, trial, and post-trial stages of existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. Includes responses to discovery requests, depositions, and other pretrial proceedings, and formal or informal requests by attorneys or others involving or reasonably anticipated to involve litigation.

d. Official information. Information in the custody and control of the DoD or its components; includes information acquired by DoD personnel or component personnel as part of their official duties, or because of their official status.

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0521 RESPONSIBILITIES

a. General. Requests for official information and records will be processed in accordance with the guidance set out in SECNAVINST 5820.8 (series). Generally, in cases where the U.S. is not, and is not reasonably anticipated to become, a party, the responsibility to act as determining authority has been delegated to general court-martial convening authorities and those commands and activities with a staff judge advocate assigned. Requests for official information should be sent directly to the command that holds the documents desired or at which the witness is employed or assigned for duty. In all cases where the U.S. is, or may reasonably be expected to be, a party, the determining authority is the Judge Advocate General or the General Counsel, as appropriate.

(1) For guidance on the information to be included in the request, see SECNAVINST 5820.8 (series).

(2) If the request is for records in a PA system of records as defined in section 0511d above, the request must be accompanied by a written release from the subject of the record, a court order, or a subpoena signed by a judge of a court of competent jurisdiction.

(3) Copies only will be provided.

(4) If compliance is inappropriate for any reason, such as the records contain classified or privileged information, the court order or subpoena shall be forwarded to the Judge Advocate General or Associate General Counsel (Litigation), under Appendix A-5-a, and the parties notified.

(5) Release of classified information for civilian proceedings, criminal or civil, must be coordinated with Chief of Naval Operations under SECNAVINST 5510.30 (series).

b. U.S. not a party. If the U.S. is not, and is not reasonably anticipated to become, a party to the proceedings, the production in Federal or State courts of evidentiary material from the service, employment, pay, or medical records of dependents or members of the Naval service, is authorized upon receipt of a request complying with SECNAVINST 5820.8,(series), accompanied by a subpoena, court order, or other request signed by the judge of a court of competent jurisdiction. The specific authority of the Judge Advocate General is not required. The Associate General Counsel (Litigation) must be notified to ensure that service has been properly effected. See Appendix A-5-a. When the request for production involves claims in favor of the Government, the Office of the Judge Advocate General, Claims and Tort Litigation Division (Code 15) should be notified. Any travel by Naval personnel to comply with such a subpoena, court order, or other request must be at no expense to the Government.

c. Matters assigned to the Judge Advocate General. If a Naval activity receives a litigation request for matters assigned to the Judge Advocate General under SECNAVINST 5430.27 (series) or Article 0331, U.S. Navy Regulations, 1990, it shall refer the matter to the Deputy Assistant Judge Advocate General (DAJAG) for International Law (Code 10), Admiralty (Code 11), General Litigation (Code 14), or Claims and Tort Litigation (Code 15,

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according to the responsibilities assigned in this Manual. The appropriate DAJAG will respond. Matters clearly not within the areas of responsibility of a particular DAJAG shall be referred to the DAJAG for General Litigation.

d. Misdirected requests. A Naval activity receiving a demand for official information originated by another DoD component shall forward appropriate portions of the request to the originating component for action.

0522 RECORDS IN THE CUSTODY OF THE NATIONAL PERSONNEL RECORDS CENTER

Court orders or documents with the legal effect of court orders, i.e. those signed by a judge of a court of competent jurisdiction, demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center for former (deceased or discharged) Navy and Marine Corps members shall be served upon Director, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132. If the National Personnel Records Center maintains records responsive to the request, that Center shall forward such records with the request to: (1) Commander, Naval Military Personnel Command or (2) Commandant of the Marine Corps (Code M), as appropriate.

0523 MEDICAL AND OTHER RECORDS OF CIVILIAN EMPLOYEES

If the U.S. is not, and is not reasonably anticipated to become, a party, records of civilian employees other than medical records may be produced upon receipt of a court order, or a subpoena signed by a judge of a court of competent jurisdiction, without specific authority from the Secretary of the Navy (Judge Advocate General) or the Associate General Counsel (Litigation), as appropriate, unless classified or marked as "For Official Use Only." If such records are involved, release must be coordinated with the Chief of Naval Operations (DNS-36). The Associate General Counsel (Litigation) must be notified to verify that service has been properly effected. Disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor is governed by SECNAVINST 5720.42 (series) and SECNAVINST 5211.5 (series), as appropriate. Where a record custodian will appear to testify with original records, the assistance of the U.S. Attorney or U.S. Marshal should be requested so custody of the original records may be maintained.

0524 PRODUCTION OF OFFICIAL RECORDS IN THE ABSENCE OF COURT ORDER

a. General. Release of official records outside the Navy in the absence of a court order is governed by SECNAVINST 5720.42 (series) (FOIA), SECNAVINST 5211.5 (series) (PA), and SECNAVINST 5820.8 (series) (if requested for litigation purposes).

b. Release of JAGMAN investigations, court-martial records, Articles 69 and 73, UCMJ, petitions, and Articles 138/1150 complaints of wrong.

(1) JAGMAN investigation (including enclosures). Requests shall be forwarded to the following release authorities, depending upon the type of

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investigation convened:

(a) For a command investigation, to the GCMCA over the command convening the investigation.

(b) For a litigation-report investigation, to OJAG (Code 15).

(c) For a court-martial or board of inquiry, to the Echelon II commander over the command convening the court or board of inquiry.

(2) Court-martial records and Articles 69 and 73, UCMJ, petitions. The Judge Advocate General is the release/denial authority for all records under this subparagraph. Any request for court-martial records or Article 69 and 73 petitions shall be promptly readdressed and forwarded to OJAG (Code 40), and the requester so notified.

(3) Articles 138/1150 complaints of wrongs. Any request for release of the Articles 138/1150 complaint file outside the DON shall be forwarded to OJAG (Code 13).

c. Accounting disclosures from systems of records. When records in a system of records are released, the release official shall consult SECNAVINST 5211.5 (series) and section 0515 above on a disclosure accounting.

0525 CERTIFICATES OF FULL FAITH AND CREDIT

The Judge Advocate General, the Deputy Judge Advocate General, and the Assistant Judge Advocates General may execute certificates of full faith and credit certifying the signatures and authority of officers of the DON.

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Department of the Navy
Litigation Points of Contact

I. Office of the Judge Advocate General

A. COGNIZANCE: Matters involving military personnel law, military justice, torts, admiralty, international law, affirmative claims such as the Medical Care Recovery Act, and Freedom of Information Act and Privacy Act suits in which the Judge Advocate General was the appellate authority. Responsibility for environmental suits is shared with the Office of the General Counsel.

The subject matter of the correspondence forwarded will determine the appropriate code designation:

(1) Suits against the U.S. or U.S. citizens in foreign courts -- Code 10 (International and Operational Law)

(2) Admiralty cases -- Code 11 (Admiralty and Maritime Law)

(3) Affirmative claims, including the Medical Care Recovery Act and actions under the Federal Tort Claims Act and Driver's Act -- Code 15 (Claims and Tort Litigation)

(4) All other cases under cognizance of the Judge Advocate General, other than those described in subparagraphs (1), (2), and (3) above, including Freedom of Information Act and Privacy Act suits -- Code 14 (General Litigation)

B. ADDRESS: Office of the Judge Advocate General
1322 Patterson Ave, SE, Suite 3000
Washington Navy Yard, DC 20374-5066

C. CONTACT INFORMATION:

(1) International and Operational Law (Code 10)
703-697-9161
DSN: 227-9161 FAX: 703-695-8073

(2) Admiralty and Maritime Law (Code 11)
202-685-5040
DSN: 325-5040 FAX: 202-685-5471

(3) General Litigation (Code 14)
202-685-5450
DSN: 325-5450 FAX: 202-685-5472

(4) Claims and Tort Litigation (Code 15)
202-685-4600
DSN: 325-4600 FAX: 202-685-5484

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II. Office of the General Counsel

A. COGNIZANCE: Matters involving commercial law, including contract disputes arising out of maritime contracts (e.g., contracts for the repair and overhaul of Naval vessels), civilian personnel law, real property, and Freedom of Information Act and Privacy Act suits in which the General Counsel denied the appeal. Responsibility for environmental law is shared with OJAG.

B. ADDRESS: Associate General Counsel (Litigation)
Office of the General Counsel
720 Kennon Street, SE, Bldg 36, RM 233
Washington Navy Yard, DC 20374-5013

C. The principal point of contact for the Office of General Counsel is the Associate General Counsel (Litigation), telephone 202-685-7039, FAX 202-685-7036.

III. Marine Corps Points of Contact

A. Staff Judge Advocate to the Commandant (CMC (JAR)) for matters referred to the Judge Advocate General.

703-614-2510
DSN: 225-2510 FAX: 703-695-1934

B. Counsel to the Commandant (CMC (CL)) for matters referred to the Office of General Counsel.

703-614-2150
DSN: 224-2150 FAX: 703-693-4453

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CHAPTER VI

DELIVERY OF SERVICE MEMBERS, CIVILIANS, AND DEPENDENTS -- SERVICE OF PROCESS AND SUBPOENAS -- STATE TAX AND REGULATORY AUTHORITY

0601 SCOPE

This chapter provides direction and guidance for various situations where a military commander is asked to provide or, at a minimum, permit the taking of personnel, property, or records from a military installation by civilian authorities. Part A generally deal with requests connected with U.S. State or Federal criminal prosecutions. Parts B and C provide procedures for responding to the initiation and processing of civil litigation, whether or not the Department of the Navy (DON) is a party. Part D provides guidance for dealing with the Department of Justice (DOJ) in criminal and civil prosecutions. Finally, Part E provides guidance on State attempts to tax or regulate activities or personnel aboard military installations.

PART A -- DELIVERY OF PERSONNEL

0602 DELIVERY OF PERSONS REQUESTED BY STATE AUTHORITIES IN CRIMINAL CASES

Part A of this chapter deals with requests by State authorities for the surrender of members or civilians pursuant to arrest warrants or similar process, generally in connection with a criminal prosecution. Responding to such requests by a State for delivery of members or civilian employees involves balancing the Federal interest in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation, against the right of the State to exercise its jurisdiction. Additionally, by regulation, Navy and Marine Corps authorities are limited in the extent to which they can directly assist such an act. Commands should respond to such requests in the manner set out below, generally using the minimum authority necessary to preserve the Federal interests without unduly restricting State jurisdiction. For purposes of this chapter, "State" includes the District of Columbia, territories, commonwealths, and all possessions or protectorates of the U.S.

0603 DELIVERY WHEN PERSONS ARE WITHIN TERRITORIAL LIMITS OF THE REQUESTING STATE

a. When local civil authorities of a State request the delivery of any member or civilian for an offense punishable under the laws of that jurisdiction, and such person is located at a Navy or Marine Corps installation within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to, and normally will, deliver such person when a proper warrant is issued. Additionally, the cognizant Fleet Commander or the equivalent Echelon II Marine Corps Commander may, after coordination with the Deputy Assistant Judge Advocate General (DAJAG) (General Litigation) (Code 14), issue

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guidance authorizing local commanders to deliver any such persons to civil authorities who are acting without a warrant under conditions in which state law permits warrantless arrest.

b. In the case of a member, delivery will only be effected upon compliance with section 0607, subject to the exceptions in section 0610 and, in the case of civil authorities acting without a warrant, any additional exceptions prescribed by the above-designated Commander. A Navy or Marine Corps judge advocate should be consulted before delivery is effected.

c. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a Navy or Marine Corps installation, except that compliance with section 0607 and consideration of section 0610 are not required.

d. Commands should normally not become actively involved in civilian law enforcement. See SECNAVINST 5820.7 (series). When a command has determined that a person is to be delivered in response to a valid warrant, the following guidance should be considered.

(1) If the person to be delivered is a military member, the member may be ordered to report to a location designated by the commanding officer, for example, to the base legal office, and surrendered to civil authorities under Article 14, UCMJ.

(2) If the person to be delivered is a civilian, the person may be invited to report to the designated space for delivery. If the civilian refuses, the civilian authorities may be escorted to a place where the civilian is located in order that delivery may be effected. A civilian may be directed to leave a classified area.

(3) All should be done with minimum interference to good order and discipline.

0604 DELIVERY WHEN PERSONS ARE BEYOND TERRITORIAL LIMITS OF THE REQUESTING STATE

a. General. When State civil authorities request delivery of any member of the Navy or Marine Corps for an alleged crime or offense punishable under the law of the jurisdiction making the request, and such member is not attached to a Navy or Marine Corps activity within the requesting State or a ship within the territorial waters thereof, the following action will be taken. Any officer exercising general court-martial jurisdiction, or officer designated by him, or any commanding officer, after consultation with a judge advocate of the Navy or Marine Corps, is authorized, upon compliance with the provisions of this section and section 0607, and subject to the exceptions in section 0610, to deliver such member to make the member amenable to prosecution. The member may be delivered upon formal or informal waiver of extradition in accordance with subsection b, or upon presentation of a fugitive warrant, in which case the procedures of subsection c apply. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a DON installation not within the requesting State, except that compliance with section 0607 and

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consideration of section 0610 are not required.

b. Waiver of extradition

(1) Any member may waive formal extradition. A waiver must be in writing and be witnessed. It must include a statement that the member signing it has received the counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that in Appendix A-6-a.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in subsection c, below.

(3) Executed copies of all waivers will be mailed to OJAG (Code 14) immediately after their execution.

(4) When a member declines to waive extradition, the nearest Region Legal Service Office or Marine Corps staff judge advocate shall be informed and shall confer with the civil authorities as appropriate. The member concerned shall not be transferred or ordered out of the State in which he is then located without the permission of the Secretary of the Navy (Judge Advocate General), unless a fugitive warrant is obtained as set forth in subsection c, below.

c. Fugitive warrants

(1) A fugitive warrant, as used in this chapter, is a warrant issued by a State court of competent jurisdiction for the arrest of a member. Normally, a State requesting delivery of a member from another State will issue a fugitive warrant to the State where the member is then located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the member is located, the latter State will normally request delivery of the member to local State authorities. Delivery to local State authorities should be arranged by Navy or Marine Corps officers designated in subsection a of this section, upon compliance with the provisions of section 0607, and subject to the conditions of section 0610 and paragraphs (3) and (4) of this subsection.

(3) Upon receipt of a request for delivery of a member under fugitive warrant to State authorities, if the member voluntarily waives extradition, the provisions of subsection b, above, apply. If the member is delivered to local authorities but refuses to waive extradition, he will have the opportunity to contest extradition in the courts of the State in which he is located.

(4) No delivery of a member by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by section 0607 and execution of such agreement either: (a) by authorities of both the requesting State and the State in which the member is located, or (b) by authorities of the State in

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which the member is located, if such authorities, on behalf of the requesting State, accept the full responsibility for returning the member to a command designated by the DON.

d. Members stationed outside the U.S. When the member sought by State authorities is not located within the U.S., see section 0605.

0605 PERSONS STATIONED OUTSIDE THE U.S.

a. Persons desired by local U.S. authorities. When delivery of any member in the Navy or Marine Corps, or any civilian employee or dependent, is desired for trial by State authorities and the individual whose presence is sought is stationed outside the U.S., the provisions of DODI 5525.09, Compliance of DoD Members, Employees and Family Members Outside the U.S. with Court Orders, as implemented in SECNAVINST 5820.9 (series), will be followed. In all such cases, the nearest Navy or Marine Corps judge advocate shall be consulted before any action is taken.

b. Members desired by U.S. Federal authorities. When the DOJ requires a member of the Navy or Marine Corps to appear at a trial in a Federal court, DOJ must make an appropriate representation to the Secretary of the Navy via the Judge Advocate General. Upon receipt of this notification the DON will, at its own expense, return the member to the U.S. and hold the member at a military facility convenient to both the Navy and DOJ. Delivery may be accomplished as set forth in section 0608, subject to the exceptions in section 0610.

0606 AUTHORITY OF THE JUDGE ADVOCATE GENERAL (JAG) AND THE GENERAL COUNSEL (GC)

a. Authority of the JAG. The JAG, the Deputy Judge Advocate General (DJAG), and the Assistant Judge Advocates General (AJAG) are authorized to act for the Secretary of the Navy in the performance of functions under this chapter. This delegation extends to the DAJAG (General Litigation) (Code 14), with the exception of actions set forth in sections 0528, 0529, and 0627. Authority is delegated to the DAJAG of the specified division within the Office of the Judge Advocate General (OJAG) to act on the specific sections noted:

(1) International Law (Code 10) - sections 0609, 0616, 0620, 0621, and 0624;

(2) Admiralty (Code 11) - sections 0616, 0620, 0621, and 0624;

(3) Claims and Tort Litigation (Code 15) - sections 0528, 0616, 0620, 0621, and 0624;

(4) Criminal Law (Code 20) - sections 0528 and 0627.

b. Authority of the GC. The authority of the GC of the Navy is prescribed by Navy Regulation, 32 C.F.R. §§ 700.327, and by appropriate departmental directives and instructions, e.g., SECNAVINST 5430.25 (series).

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The principal areas of responsibility of the Office of the General Counsel (OGC) are commercial law, including maritime contract matters (e.g., contracts for the repair and alteration of Naval vessels); civilian employee law at the Headquarters of the DON; and through the JAG for the remainder of the Navy; real property law; and Freedom of Information Act and Privacy Act matters as delineated in SECNAVINST 5720.42 (series). The OGC shares responsibility with the JAG for environmental law cases.

c. Points of contact. Commanding officers are advised to contact their local area judge advocates for assistance in referring matters to the appropriate office of the JAG or GC. Appendix A-5-a sets out the litigation points of contact for the JAG and OGC.

d. Coordination with the Commandant of the Marine Corps (CMC). Marine Corps commands shall inform the CMC of all matters referred to the JAG or OGC. Copies of all correspondence and documents shall also be provided to CMC. The Staff Judge Advocate to the CMC (JAR) shall be advised of all matters referred to the JAG. Counsel to the CMC (CL) shall be advised of matters referred to the OGC. Appendix A-5-a to this chapter sets out litigation points of contact for the CMC.

0607 AGREEMENT REQUIRED PRIOR TO DELIVERY TO STATE AUTHORITIES

a. Delivery under Article 14, UCMJ. When delivery of any member of the Navy or Marine Corps to the civilian authorities of a State is authorized, the member's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to Appendix A-6-b. The State official completing the agreement must show that he is authorized to bind the State to the terms of the agreement. When indicating in the agreement the Naval or Marine Corps activity to which the member delivered is to be returned by the State, care should be taken to designate the closest appropriate activity to the command to which the member is attached that possesses special court-martial jurisdiction. The DON considers this agreement substantially complied with when: (1) the member is furnished transportation under escort in cases of delivery in accordance with section 0613 to a Naval or Marine Corps activity as set forth in the agreement; (2) the member is provided cash to cover incidental expenses en route thereto; and (3) the DON is so informed. Any departure from the agreement set forth in Appendix A-6-b must have prior approval from OJAG (Code 14). As soon as practicable, a copy of the delivery agreement shall be forwarded to OJAG (Code 14).

b. Delivery under Interstate Agreement on Detainers Act. Special forms, not contained in this Manual, are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See section 0613 for a detailed discussion of the Detainers Act.

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0608 DELIVERY OF PERSONS TO FEDERAL AUTHORITIES

a. Authority to deliver. When Federal law enforcement authorities display proper credentials and Federal warrants for the arrest of members, civilian employees, civilian contractors and their employees, or dependents residing at or located on a DON installation, commanding officers are authorized to, and should, allow the arrest of the individual sought. The exceptions in section 0610 may be applied to members. A Navy or Marine Corps judge advocate should be consulted before delivery is effected.

b. Agreement not required of Federal authorities. The agreement described in section 0607 is not a condition to the delivery of members to Federal law enforcement authorities. Regardless of whether the member is convicted or acquitted, after final disposition of the case, the member will be returned to the Naval Service, provided that Naval authorities desire his return, and the necessary expenses will be paid from an appropriation under the control of the DOJ.

0609 DELIVERY OF PERSONS TO FOREIGN AUTHORITIES

Except when provided by agreement between the U.S. and the foreign government concerned, commanding officers are not authorized to deliver members or civilian employees of the DON, or their dependents residing at or located on a Naval or Marine Corps installation, to foreign authorities. When a request for delivery of these persons is received in a country with which the U.S. has no agreement or when the commanding officer is in doubt, advice should be sought from OJAG (Code 14). Detailed information concerning the delivery of members, civilian employees, and dependents to foreign authorities when a status of forces agreement is in effect is contained in DoD Directive 5525.1 and SECNAVINST 5820.4 (series).

0610 CIRCUMSTANCES IN WHICH DELIVERY IS REFUSED

a. Disciplinary proceedings pending. When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of members to Federal or State authorities.

b. When delivery may be refused. Delivery may be refused only in the following limited circumstances:

(1) Where the accused has been retained for prosecution as set forth in section 0125; or

(2) When the commanding officer determines that extraordinary circumstances exist which indicate that delivery should be refused.

c. Reports required. When delivery will be refused, the commanding officer shall report the circumstances to OJAG (Code 14) by telephone, or message if telephone is impractical. The initial report shall be confirmed by letter setting forth a full statement of the facts. See Appendix A-6-c. A copy of the report shall be forwarded to the Region Commander.

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0611 MEMBERS RELEASED BY CIVIL AUTHORITIES ON BAIL OR ON THEIR OWN RECOGNIZANCE

A member of the Navy or Marine Corps arrested by Federal or State authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, when a member of the Navy or Marine Corps is arrested by Federal or State authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer, upon verification of the attesting facts, date of trial, and approximate length of time that should be covered by the absence, shall grant liberty or leave to permit appearance for trial, unless this would have a serious negative impact on the command. In the event that liberty or leave is not granted, a judge advocate of the Navy or Marine Corps should immediately be requested to act as liaison with the court. Nothing in this section is to be construed as permitting the member arrested and released to avoid the obligations of bond or recognizance by reason of the member's being in the military service. Members shall be advised that, in the event the member is ordered not to leave the jurisdiction of the court, the member shall immediately contact his command and request further instructions. The command may make arrangements for the member to remain in the court's jurisdiction through no-cost TAD to the nearest Naval or Marine Corps activity. If TAD arrangements are impractical, or if it appears that the matter cannot be resolved in 30 days, the member's command shall seek guidance and assistance from the Navy Personnel Command.

0612 INTERVIEWING MEMBERS OR CIVILIAN EMPLOYEES BY FEDERAL CIVILIAN INVESTIGATIVE AGENCIES

Requests by the Federal Bureau of Investigation, Naval Criminal Investigative Service, or other Federal civilian investigative agencies to interview members or civilian employees of the DON suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to OJAG (Code 14) or OGC, as appropriate, by telephone, or by message if telephone is impractical. When the employee in question is a member of an exclusive bargaining unit, a staff judge advocate or GC attorney will be consulted to determine whether the employee has a right to have a bargaining unit representative present during the interview.

0613 REQUEST FOR DELIVERY OF MEMBERS SERVING SENTENCE OF COURT-MARTIAL

a. General. Article 14, UCMJ, 10 U.S.C. § 814, provides authority to honor requests for delivery of members serving a sentence of a court-martial. Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate Agreement on Detainers Act, 18 U.S.C. Appendix 9, hereinafter "the Act", which applies to the Federal agency holding the prisoner. The DON, as an agency of the Federal Government, shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for a prisoner to be tried on charges pending before State courts, either at the request of the State where the charges are pending or the prisoner's request. When refusal of delivery is intended, comply with section 0610c.

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b. Interstate Agreement on Detainers Act. Upon request under the Act by either State authorities or the prisoner, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall communicate with the appropriate State officials, and monitor and ensure that the cognizant commander acts on all such requests. The Act provides that court-martial sentences continue to run during temporary custody. This section does not cover requests between Federal authorities. The procedure set forth in subsection c, below, shall be applied in such cases.

(1) State request. State officials may request delivery of prisoners in military custody under section 2, Article IV, of the Act. Where (1) a detainer has been lodged against the prisoner, and (2) the prisoner is serving a sentence, regardless of whether an appeal is in process, delivery is mandatory unless the request is disapproved by the cognizant commanding officer of the prisoner.

(2) Prisoner request. The obligation to grant temporary custody under the Act also applies to prisoners' requests to be delivered to State authority. Section 2, Article III(c) of the Act requires the custodial official to inform the prisoner of the existence of any detainer and of the prisoner's right to request disposition. The prisoner's request is directed to the custodial official who must forward it to the appropriate prosecuting official and court, with a certificate of prisoner-status as provided by Article III of the Act.

c. Article 14, UCMJ. When a request for custody does not invoke the Act, delivery of custody shall be governed by Article 14, UCMJ, and sections 0603 through 0610, of this Manual. The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, e.g., additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. Execution of the agreement discussed in section 0607 is a condition precedent to delivery to State authorities. It is not required before delivery to Federal authorities. See section 0608. Unlike delivery under the Act, delivery of custody pursuant to Article 14, UCMJ, interrupts execution of the court-martial sentence.

d. Forms. The form in Appendix A-6-c with appropriate modifications should be utilized in reporting refusal of delivery of prisoners.

0614 REQUEST FOR DELIVERY OF MEMBERS SERVING SENTENCE OF A STATE COURT

a. General. Ordinarily, members serving protracted sentences resulting from a State criminal conviction will be processed for administrative discharge by reason of misconduct. See MILPERSMAN 1910-144 and paragraph 6017.3c, MARCORSEPMAN. It may, however, be in the best interest of the Naval Service to retain a member charged with a serious offense, subject to military jurisdiction, to try the member by court-martial. The Navy may obtain temporary custody of incarcerated members for prosecution with a request to the State under the Act, 18 U.S.C. App.9. The DON may use the Act in the same manner in which State authorities may request members pursuant to section 0613.

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b. Interstate Agreement on Detainers Act. Military authorities may use the Act to obtain temporary custody of a member incarcerated in a State institution, pursuant to conviction by a State court, to resolve criminal charges against the member before a court-martial.

(1) Detainer. If a command requests temporary custody under the Act, the commanding officer of the cognizant Region Legal Service Office (RLSO) or the Marine Corps staff judge advocate, shall file a detainer with the warden, commissioner of corrections, or other State official having custody of the member. The detainer shall identify the member with particularity, enumerate the military charges pending, and request the command be notified in advance of any intention to release the member from confinement.

(2) Request for delivery. As soon as practical after filing the detainer, the commanding officer of the cognizant RLSO or the Marine Corps staff judge advocate, shall prepare a written request for temporary custody of the member addressed to the State official charged with administration of the State penal system. The request shall designate the person(s) to whom the member is to be delivered and shall be transmitted via the military judge to whom the member's case has been assigned. If the request is properly prepared, the military judge shall approve, record, and transmit the request to the addressee official. The Act provides the State with a 30-day period after receipt of the request before the request is to be honored. Within that period of time, the governor of the State may disapprove the request, either unilaterally or upon the prisoner's request. If the governor disapproves the request, the command should coordinate any further action with OJAG (Code 14).

(3) Responsibilities. The cognizant command shall ensure that the responsibilities of a receiving jurisdiction, delineated in section 2, Article IV of the Act, are discharged. In particular, the Act requires that the receiving jurisdiction:

(a) Commence the prisoner's trial within 120 days of the prisoner's arrival, unless the court, for good cause shown during an Article 39(a), UCMJ, session, grants a continuance necessary or reasonable to promote the ends of justice;

(b) Hold the prisoner in a suitable jail or other facility regularly used for persons awaiting prosecution, except for periods during which the prisoner attends court or travels to or from any place at which his presence may be required;

(c) Return the prisoner to the sending jurisdiction at the earliest practical time, but not before the charges that underlie the request have been resolved because prematurely returning the prisoner may result in dismissal of the charges; and

(d) Pay all costs of transporting, caring for, keeping, and returning the prisoner to the sending jurisdiction, unless the command and the State agree on some other allocation of the costs or responsibilities.

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0615 REQUEST FOR INJUNCTIVE RELIEF (HABEAS CORPUS, TEMPORARY RESTRAINING ORDERS, ETC.) AND SERVICE OF PROCESS BY MAIL

a. General. When a member or civilian employee of the Navy or Marine Corps receives service of process for injunctive relief (such as for habeas corpus or a temporary restraining order), or receives service of process by mail in any case involving the named member's or employee's duties or official position and such service contains an attached form for return of acknowledgement of service, the nearest judge advocate of the Navy or Marine Corps or attorney with OGC shall be immediately contacted. The legal representative shall immediately contact the nearest U.S. Attorney for assistance. A report of such service shall be made promptly to OJAG (Code 14) or to the Assistant Government Counsel (AGC) (Litigation), as appropriate per Appendix A-5-a, by telephone, or by message if telephone is impractical and shall include: the name of the petitioner(s) and defendant(s), a summary of the bases of the petition, and the date and time of any scheduled hearing. Action must be taken expeditiously in injunctive cases as the courts generally allow a very short period of time for response.

b. Reports required

(1) If habeas relief is requested, a copy of all pleadings, orders, and process in the case, will be forwarded to OJAG (Code 14) or the AGC (Litigation), as appropriate per Appendix A-5-a, along with a detailed explanation of the circumstances under which the petitioner has been detained. See section 0621(b).

(2) When the hearing has been completed and the court has issued its order in the case, a copy of the order shall be forwarded promptly to OJAG (Code 14) or to the AGC (Litigation), as appropriate per Appendix A-5-a. This is particularly important if the order was adverse in order to facilitate compliance or to make a timely determination whether to undertake further proceedings.

PART B -- SERVICE OF PROCESS AND SUBPOENAS UPON PERSONNEL

0616 SERVICE OF PROCESS UPON PERSONNEL

a. Service of Process of Federal or State Courts

(1) General. Commanding officers afloat and ashore may permit service of civil process of Federal or State courts upon members, civilian employees, dependents, or contractors residing at or located on a Naval installation, if located within their commands. Service will not be made within the command without the commanding officer's consent. The intent of this provision is to protect against interference with mission accomplishment and to preserve good order and discipline, while not unnecessarily impeding the court's work. Where practical, the commanding officer shall require that the process be served in his presence, or in the presence of a designated officer. In all cases, individuals will be advised to seek legal counsel, either from a legal assistance attorney or from personal counsel for service in personal matters, and from Government counsel for service in official matters. The commanding

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officer is not required to act as a process server. The action required depends in part on the status of the individual requested and which State issued the process.

(2) In-state process. When a process server or law enforcement officer, such as a deputy sheriff, with civil process originating from a State or Federal court from the jurisdiction where the Naval station is located requests permission to serve process aboard an installation, the command ordinarily should not prevent service of process so long as delivery is made in accordance with reasonable command regulations and is consistent with good order and discipline. Withholding service may be justified only in the rare case when the individual sought is located in an area under exclusive Federal jurisdiction not subject to any reservation by the State of the right to serve process. Questions on the extent of jurisdiction should be referred to the staff judge advocate, command counsel, or local RLSO. If service is permitted, an appropriate location should be designated, for example, the command legal office, where the process server and the member or employee can meet privately in order that process may be served away from the workplace. A member may be directed to report to the designated location. A civilian may be invited to the designated location. If the civilian does not cooperate, the process server may be escorted to the location of the civilian in order that process may be served. A civilian may be required to leave a classified area in order that the process server may have access to the civilian. If unusual circumstances require that the command not permit service, see section 0616e.

(3) Out-of-state process. In those cases where the process is to be served by authority of a jurisdiction other than that where the command is located, the person named is not required to accept process. The same is true regardless of whether the process server or law enforcement official is from within the state or out-of-state, since the jurisdiction of the issuing court determines whether the person is required to accept process or not. Accordingly, the process server acting pursuant to out-of-state jurisdiction need not be brought face-to-face with the person named in the process. Rather, the process server should report to the designated command location while the person named is contacted, apprised of the situation, and advised that he may accept service, but also may refuse. In the event that the person named refuses service, the process server should be so notified. If service of process is attempted from out-of-state by mail and refused, the refusal should be noted and the documents returned to the sender. Questions should be referred to the staff judge advocate, command counsel, or the local RLSO.

b. Service of process arising from official duties

(1) Whenever a member or civilian employee of the DON is served with process because of his official position, OJAG (Code 14) or the AGC (Litigation), as appropriate per see Appendix A-5-a, shall be notified by telephone, or by message if telephone is impractical. Notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. For cases involving injunctive relief, see section 0615. For lawsuits filed in the U.S. District Court, Washington DC, service of process may be made upon the DON's OGC.

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(2) Any member or civilian employee served with Federal or State court civil or criminal process or pleadings, including traffic tickets, arising from actions performed in the course of official duties shall immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts and notify OJAG (Code 14) or AGC (Litigation), as appropriate per Appendix A-5-a, by telephone or by message if telephone is impractical, of the service and immediately forward the pleadings and process to the relevant office. The member or civilian employee will be advised of the right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. §§ 1442-1442a, rights under the Federal Employees Liability Reform and Tort Compensation Act (28 U.S.C. § 2679), if applicable, and the right of a Federal employee to request representation by DOJ attorneys in Federal (civil) or State (civil or criminal) proceedings and in congressional proceedings in which that person is sued in an individual capacity, as delineated in 28 C.F.R. § 50.15 (1989). Requests for representation shall be addressed to OJAG (Code 14) or AGC (Litigation), as appropriate per Appendix A-5-a, and shall be endorsed by the commanding officer, who shall provide all necessary data relating to the questions of whether the person was acting within the course of official duty or scope of employment at the time of the incident out of which the suit arose.

(3) If the service of process involves a potential claim against the Government, see section 0804 and JAGINST 5890.1 (series). The right to remove to Federal Court under 28 U.S.C. §§ 1442-1442a must be considered where the outcome of the State court action may influence a claim or potential claim against the U.S. Questions should be directed to OJAG (Code 14) or AGC (Litigation), in accordance with Appendix A-5-a of this Manual.

c. Service of process of foreign courts

(1) Usually, the amenability of members, civilian employees, and their dependents stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the U.S. and the foreign country concerned. For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846. When service of process on a person described above is attempted within the command in a country in which the U.S. has no agreement on this subject, advice should be sought from OJAG (Code 14) or AGC (Litigation), as appropriate. See Appendix A-5-a. When service of process is upon the U.S. Government or one of its agencies or instrumentalities as the named defendant, the doctrine of sovereign immunity may allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the U.S., on the other hand, must always be processed in accordance with the applicable international agreement or treaty, regardless of whether the suit involves acts performed in the course of official duties. OJAG (Code 14), as appropriate per Appendix A-5-a, will arrange through the DOJ for defense of the suit against the U.S. or an official acting within the scope of official duties, or make other arrangements, and will issue instructions.

(2) Usually, service members, civilian employees, and their dependents stationed in a foreign country are not required to accept service of process

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outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases, acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with subsection a(3), above. In exceptional cases when the U.S. has agreed that service of process will be accepted by such persons when located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of subsection a(2), above, will govern.

(3) Under the laws of some countries, service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal documents. Therefore, if a commanding officer or other officer in the military service personally hands, or attempts to hand, that person the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon service members, civilian employees, and their dependents stationed in a foreign country, a commanding officer shall notify the person of the fact that a particular foreign court is attempting to serve process and also inform that person that the process may be ignored or received. If the person to be served chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the commanding officer had the document, that the person chose to ignore it, and that no physical offer of service had been made. The commanding officer will advise OJAG (Code 14) or AGC (Litigation), as appropriate per Appendix A-5-a of this Manual, of all requests for service of process from a foreign court and the details thereof.

d. Leave or liberty to be granted persons served with process. When members or civilian employees are either served with process, or voluntarily accept service of process, in cases where the U.S. is not a party to the litigation, the commanding officer normally will grant leave or liberty to the person served to permit compliance with the process, unless to do so would have an adverse impact on Naval operations. If the U.S. is a party, liaison with the DOJ and local U.S. Attorney's offices is through the appropriate litigation division within OJAG, based on the subject matter of the litigation. See sections 0620 and 0624. When a member or civilian employee is a witness for a nongovernmental party because of performance of official duties, the commanding officer may issue the person concerned permissive orders authorizing attendance at the trial at no expense to the Government. The provisions of SECNAVINST 5820.8 (series) must also be considered in such cases. Members or civilian employees may accept allowances and mileage tendered; however, any fees tendered for testimony must be paid to the DON unless the member or employee is on authorized leave while attending the judicial proceeding. When it would be in the best interests of the U.S. Government, for example, in State criminal trials, travel funds may be used to provide members and civilian employees as witnesses as provided in the Joint Federal Travel Regulations. Responsibility for the payment of the member's mileage and allowances will be determined pursuant to the Joint Federal Travel Regulations.

e. Report where service not allowed. Where service of process is not permitted, or where the member or civilian employee is not given leave, liberty, or orders to attend a judicial proceeding, a report of such refusal

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and the reasons therefore shall be made by telephone, or message if telephone is impractical, to OJAG (Code 14) or AGC (Litigation), as appropriate per Appendix A-5-a of this Manual.

0617 MEMBERS OR CIVILIAN EMPLOYEES SUBPOENAED AS WITNESSES IN STATE COURTS

Where members or civilian employees are subpoenaed to appear as witnesses in State courts, and are served as described in section 0616, subsection 0616d applies. If these persons are requested to appear as witnesses in State courts when the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases), follow the procedures described in subsection 0618a. If State authorities are attempting to obtain the presence of a member or a civilian employee as a witness in a civil or criminal case, and such person is unavailable because of an overseas assignment, the command should immediately contact OJAG (Code 14), as appropriate per Appendix A-5-a of this Manual.

0618 MEMBERS OR CIVILIAN EMPLOYEES REQUESTED AS WITNESSES IN FEDERAL COURTS

a. Witnesses on behalf of the Federal Government. Understanding that it may cause disruption to normal operations, it is generally the policy of the DON to make both members and civilian employees available to testify on behalf of the U.S. in Federal courts. Commands may learn that such testimony is required through a formal subpoena or other written notification from the DOJ, or through notice by an OGC attorney, or Navy or Marine Corps judge advocate who is coordinating the matter with the DOJ. If a judge advocate is not yet involved, the command should contact the nearest RLSO or staff judge advocate for assistance in responding to the subpoena/request.

(1) If the member or employee is required to testify about facts or information that he acquired in the course of his assigned duties, that person is appearing in his official capacity and the command to which the person is attached bears the cost for the additional duty orders. See 28 CFR § 21.2(d)(1).

(2) If the member or employee appears on behalf of the U.S. in an unofficial capacity, (i.e., where the person is testifying about facts or information that he did not acquire in the course of his duties), the command should issue the orders for, and pay the travel expenses of, the person. In these circumstances, the command may seek reimbursement for those expenses from the DOJ's witness appropriation account. See 28 CFR § 21.2(d)(1). The OGC attorney or judge advocate involved can assist in obtaining this reimbursement.

b. Witnesses on behalf of nongovernmental parties

(1) Criminal actions. When members or civilian employees are served with a subpoena to appear as a witness for a defendant in a criminal action and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer may issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the person's absence would have an adverse impact on

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Naval operations. In such a case, a full report of the circumstances will be made to the OJAG (Code 14) or, in the case of civilian employees, to the AGC (Litigation). In those cases where fees and mileage are not tendered as required by Rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer also may issue permissive orders at no cost to the Government. Such persons, however, should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government. See subsection 0616d, for additional guidance concerning fees and mileage.

(2) Civil actions. When members or civilian employees are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of section 0616 apply.

0619 NAVAL PRISONERS AS WITNESSES OR PARTIES IN CIVILIAN COURTS

a. Criminal actions. When Federal or State authorities desire the attendance of a Naval prisoner as a witness in a criminal case, they should submit a written request for such person's attendance to the Judge Advocate General. The civilian authority should include the following averments in its request: (1) that the evidence to be derived from the prisoner's testimony is unavailable from any other source; (2) that the civilian authority will provide adequate security arrangements for the prisoner and assume responsibility for the prisoner while he is in its custody; and (3) that the civilian authority will assume all costs of transporting the prisoner from the brig, of maintaining that prisoner while in civilian custody, and of returning the prisoner to the brig from which he was removed. The civilian authority should also include in its request an estimate of the length of time the prisoner's services will be required, and should specify the mode of transport by which it intends to return the prisoner. Upon receipt of such a request, authority by the JAG will be given, in a proper case, for the production of the requested Naval prisoner in court without resort to a writ of habeas corpus ad testificandum (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

b. Civil actions. The DON will not authorize the attendance of a Naval prisoner in a Federal or State court, either as a party or as a witness, in private litigation pending before such a court. The deposition of a Naval prisoner may be taken in such a case, subject to reasonable conditions or limitations imposed by the command concerned.

0620 INTERVIEWS AND DEPOSITIONS IN CONNECTION WITH CIVIL LITIGATION IN MATTERS PERTAINING TO OFFICIAL DUTIES

Depositions and subpoenas requesting testimony from active duty officers, enlisted Sailors and Marines, Reserve personnel on active duty, current DON civilian and contract employees, military retirees, and former or retired civilian employees are controlled by DODD 5405.2 and SECNAVINST 5820.8 (series). Those regulations are published at 32 C.F.R. §§ 97 and 725 (2002)

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and issued consistent with 5 U.S.C. § 301 and the Supreme Court holding of U.S. ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). Touhy confirms the authority of the head of a Federal agency to control the release of testimony or other official information. See SECNAVINST 5820.8 (series) or 32 C.F.R. § 725 for specific guidance. For further information, contact OJAG (Code 14).

0621 SUITS AGAINST THE U.S.

a. General. The Attorney General has primary responsibility for representing the U.S. in any litigation in which the U.S. has an interest. The JAG and GC, within the areas of their respective jurisdictions, maintain close liaison with the DOJ to afford the Attorney General timely notice of legal actions arising out of the operations of the DON. Reports to OJAG (Code 14) or AGC (Litigation), as appropriate per Appendix A-5-a, are required of all suits filed against the U.S., or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement, or in cases where the U.S. is, in legal effect, the defendant.

b. Reports to OJAG (Code 14). When a command learns, by service of process or otherwise, of the commencement of any civil litigation or legal proceedings, other than suits within the jurisdiction of the General Counsel as set forth in subsection c, below, which arise out of the operations of the DON, or are otherwise of substantial interest to it, such command will report to OJAG (Code 14), as appropriate per Appendix A-5-a, by telephone, or by message if telephone is impractical. This category of civil litigation and other legal proceedings includes, but is not limited to, any legal proceeding involving the U.S. as a party and arising out of operations of the DON or Navy non-appropriated fund activities; proceedings against any person subject to military law or any official or employee of the DON in connection with public duties; and proceedings in which attachment of Government funds or other property is sought. The report, which shall be confirmed by message, shall contain the following information as may be pertinent:

(1) Names of parties to the proceeding.

(2) Nature of the action.

(3) Correct designation of the tribunal in which the proceeding is brought.

(4) Docket number of the case, if available.

(5) Names of person or persons on whom service was made, method of service, and dates.

(6) Explanation of the Government's interest in the proceeding.

(7) Date by which the defendant must plead or otherwise respond.

(8) Nature of the principal defense, if known.

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(9) Status of the defendant as a Government officer, employee, agent, contractor, non-appropriated-fund activity employee, etc.

(10) Amount claimed, or other relief sought.

(11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to be defended by a U.S. Attorney.

(12) Whether the subject of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.

(13) If the action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the U.S. Normally, the names of such attorneys should be chosen from a list maintained by the U.S. Embassy or Consulate.

(14) Other information necessary for a full understanding of the action and to enable the Government to prepare a defense.

c. Reports to the GC. A report as required above shall be made to the AGC (Litigation) DON, Washington, DC 20360-5110, rather than to OJAG (Code 14), in all cases relating to:

(1) Business and commercial law;

(2) Patent law;

(3) Civilian employee matters; and

(4) Contract claims and litigation.

For a more detailed explanation of areas of responsibility, see SECNAVINST 5430.25.

d. Cases involving civilian employee matters. The AGC (Litigation) has responsibility for litigation involving civilian employees before a Federal court; OJAG (Code 14) and AGC (Civilian Personnel) have responsibility for representation before most administrative tribunals (e.g., the U.S. Merit Systems Protection Board or the Equal Employment Opportunity Commission). The CMC (MPL) is responsible for all matters before the Federal Labor Relations Authority that affect Marine Corps commands. Commands, activities, commanding officers of RLSOs, and Marine Corps staff judge advocates will cooperate with attorneys of OGC and render requested assistance in litigation involving civilian employees.

e. Initial and supplemental reports. If all pertinent information is not readily available, a prompt report should be made with such information as is available, supplemented by an additional report as soon as possible.

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0622 REPOSSESSION OF PERSONAL PROPERTY

Repossession of personal property, located on a Navy or Marine Corps installation, belonging to a member or to any dependent residing at or located on a DON installation, may be permitted in the discretion of the commanding officer of the installation where the property is located, subject to the following. The documents purporting to authorize repossession and the procedures for repossessing the property must comply with State law. Prior to permitting physical repossession of any property, the commanding officer shall cause an informal inquiry into the circumstances and then determine whether to allow the repossession. If repossession is to be allowed, the person whose property is to be repossessed should be asked if he wishes to relinquish the property voluntarily. Repossession must be carried out in a manner prescribed by the commanding officer. In the case of property owned by civilian employees of the DON or civilian contractors or their employees or dependents, the commanding officer should direct that the disputed property be removed from the installation until the commanding officer is satisfied that the dispute is resolved.

PART C -- LIAISON WITH THE DEPARTMENT OF JUSTICE

0623 LITIGATION REPORTS AND PLEADINGS

In all lawsuits involving the DON, other than those under the cognizance of the GC, the pleadings or litigation report to the DOJ will be prepared in OJAG (Code 14) unless authority to prepare the report is specifically delegated by the JAG.

0624 LIAISON WITH THE U.S. ATTORNEY AND OTHER OFFICIALS OF THE DOJ, INCLUDING OFFICIALS OF THE U.S. MARSHAL SERVICE

In matters other than those under the cognizance of the GC, (see sections 0621(c), 0621(d), and Appendix A-5-a), liaison with local U.S. Attorneys and other officials of the DOJ, including officials of the U.S. Marshal Service, will be maintained through JAG. This does not apply: (1) to the initial report required by section 0615 in cases involving injunctive relief; (2) to cases involving service by mail with attached form for return of acknowledgment; and (3) where specific authority to establish such liaison has been delegated to a field activity. For cases within the authority of the GC, liaison shall be maintained by the AGC (Litigation), unless delegated by him.

PART D -- MISDEMEANORS COMMITTED ON NAVY AND MARINE CORPS INSTALLATIONS

0625 GENERAL

The Federal Magistrates Act, 18 U.S.C. §§ 3401-3402 (1982), provides for trial by Federal magistrates of individuals who commit misdemeanors within Federal reservations. Policies and procedures for implementation of the Federal

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Magistrates Act and the handling of misdemeanors committed on Navy and Marine Corps installations are in SECNAVINST 5822.1 (series).

0626 PROSECUTION BEFORE FEDERAL MAGISTRATES

a. Responsibility of the DOJ. The DOJ is primarily responsible for the prosecution of offenses before Federal magistrates. With the approval of the appropriate U.S. Attorney, qualified Navy and Marine Corps judge advocates may prosecute misdemeanors committed on Navy and Marine Corps installations situated within the judicial district of a U.S. District Court.

b. Designation of Navy and Marine Corps officers to conduct prosecutions. If the U.S. Attorney advises that no DOJ representative is available to prosecute misdemeanors and so authorizes, the commanding officer of an installation may designate one or more Navy or Marine Corps judge advocates of the command, or make necessary arrangements for the designation of one or more Navy or Marine Corps judge advocates stationed in the area, to conduct such prosecutions.

PART E -- APPEARANCES BY JUDGE ADVOCATES IN CIVIL COURT AND/OR CIVIL ADMINISTRATIVE PROCEEDINGS

0627 OUTSIDE PRACTICE OF LAW ON BEHALF OF MEMBERS

a. Navy or Marine Corps judge advocates may not appear as counsel on behalf of any member of the armed services before any civil court, civil administrative tribunal, civil regulatory body, or any civil governmental agency, in any proceeding, including a collateral attack on a court-martial, administrative discharge, or investigatory proceeding, unless specifically authorized by the JAG or Commander, Naval Legal Service Command, as appropriate. The Expanded Legal Assistance Program, which involves limited in-court appearances by Navy and Marine Corps judge advocates, is a separate matter and specifically provided for in section 0711 of this Manual.

b. Requests by Navy or Marine Corps judge advocates to appear as counsel before any court, tribunal, body, or agency outlined above will be delivered to the commanding officer of the judge advocate, or staff judge advocate, as appropriate. The request must contain: the identity of the member to be represented; reasons for requesting permission to appear; identity of the court, tribunal, etc., where appearance is desired; nature of action intended to be filed; relief to be requested; reasons why civilian counsel may not be retained; estimated time required for representation (including preparation, travel, and appearance); and any other action previously filed or pending on the same subject matter. The commanding officer or staff judge advocate will forward the request to the Office of the Judge Advocate General, 1322 Patterson Ave. SE, Suite 3000, Code 13, Washington Navy Yard, DC 20374, with comments and recommendations concerning the request. If the request is for a Marine Corps judge advocate, the request, with comments and recommendations, shall be submitted to OJAG (Code 13) via the Judge Advocate Division, Headquarters, U.S. Marine Corps, Pentagon, Washington, DC 20370-3000. Comments and recommendations concerning the request will include, but are not

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limited to: the nature and status of any pending military justice, court-martial, administrative discharge, or investigatory proceedings relevant to the request; a listing of all counsel participating in the case; the nature and status of any previous civil or military court action in this or related cases; and comment on the availability of the requesting counsel in relation to the overall workload in his office.

c. If the request for appearance is approved by the JAG or Commander, Naval Legal Service Command, as appropriate, any expenses incurred due to representation will be at no cost to the Government.

d. Military prisoners sentenced to death by a court-martial, who seek to file in Federal civilian court(s) post-conviction habeas corpus petition(s) respecting such court-martial following the approval of their court-martial sentence to death by the President pursuant to Article 71, UCMJ, shall, upon request of the accused to the JAG, be detailed military counsel by the JAG to represent them in such proceedings and any appeals therefrom. See Article 70(e), UCMJ. For the purposes of these proceedings, the provisions of subsection c, above, do not apply.

PART F -- STATE TAX AND REGULATORY AUTHORITY

0628 BACKGROUND

Under the Constitution, Federal law generally controls over State law, and the Federal Government generally is immune from taxation or regulation by State authorities. Many exceptions exist, however, and commanders of installations or units in the U.S. often must deal with State authorities. This part discusses relations with State revenue authorities, both as to claims for State taxes and demands for compliance with State revenue-related regulations. It also describes in general terms the liability of members and their dependents to taxation and regulation by States and localities.

0629 STATE REGULATION OF FEDERAL FUNCTIONS, INCLUDING SALES

a. Application of State law. Except where Congress has specifically authorized application of State law, the Federal Government is immune from any regulation by State or local authorities. Congress has authorized some State regulation of certain Federal activities in the environmental area. See Chapter XIII of this Manual.

b. Federal immunity. In most other areas, however, the Federal Government need not comply with State regulations, nor obtain State licenses for its activities. This immunity extends to activities of the DON, and to Federal instrumentalities, including authorized non-appropriated fund instrumentalities (NAFI's). The American Red Cross also has been ruled to be a Federal instrumentality. Thus, commissaries, exchanges, bowling alleys, and other NAFI-operated facilities need not, as a matter of law, comply with State law or obtain State business licenses to operate. In some areas, such as the age for sale of alcoholic beverages and operation of bingo games, the Secretary of the Navy has directed compliance with State restrictions. This

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reflects a DON policy of voluntary compliance, and does not subject Federal instrumentalities to direct State regulation. The immunity accorded Federal instrumentalities applies wherever they may be located, and is not limited to exclusive jurisdiction property. For example, NAFI resale outlets selling alcoholic beverages, whether on exclusive, concurrent, or proprietary jurisdiction property, may not be required to obtain State liquor licenses; and vehicles owned by the Government or NAFI's need not have State license plates in order to operate off-base.

c. Private individuals. The immunity applies only to the Government and its instrumentalities. Private individuals and organizations operating businesses on military property generally are subject to State laws and regulation. Thus, dependents operating businesses out of their quarters on concurrent jurisdiction land, even if authorized by the base commander, are subject to State taxes, regulations, and licensing requirements. Likewise, thrift shops operated by spouse clubs or charitable organizations are subject to State taxation, and may be subject to business license requirements. Private activities of organizations of members, civilian employees, or dependents, even if command sponsored, will be subject to State taxes and may be subject to regulation unless the activity is a properly organized and authorized NAFI. In the same manner, activities of Federal contractors may be subject to State law, taxes, and regulation, unless the application of State law would interfere with a Federal function.

d. Demands for compliance. Commanders confronted with demands for compliance with State regulation or payment of State taxes, other than environmental regulations, taxes, or fees, should immediately contact a local staff judge advocate or General Counsel attorney and notify OJAG (Code 14). For procedures to deal with State demands for compliance with environmental regulations or payment of environmental fees or taxes, see Chapter XIII of this Manual.

0630 STATE AND LOCAL TAXATION OF ON-BASE SALES

The Buck Act authorizes application of State sales taxes on military installations, even those under exclusive Federal jurisdiction. See 4 U.S.C. § 105. Sales by the U.S. and its instrumentalities are exempt. See 4 U.S.C. § 107. Thus, commissaries, exchanges, and other NAFI resale outlets need not collect State or local sales tax on sales to authorized patrons. Any activity which is not an authorized NAFI resale outlet, however, must collect sales taxes as required by State and local law. This may include thrift shops operated by private organizations, flea markets, or large "coffee messes" or "sandwich messes" that do not qualify as NAFI resale outlets. The requirements of State and local laws vary and should be consulted in each case.

0631 STATE AND LOCAL TAXES, INCLUDING HOTEL TAXES AND THE FEDERAL TRAVELER

The Federal Government's exemption from State and local taxation applies only to taxes whose "legal incidence" is on the Government or its instrumentalities. This usually means that the Government is exempt only where the Government itself actually pays the tax. Where an individual

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incurs a tax liability for a transaction and is then reimbursed by the Federal government, there normally is no immunity because the legal incidence of the tax was on the individual. Hotel taxes can be structured in various ways, but the legal incidence of the tax is virtually always on either the innkeeper or the person occupying the room. As a result, the fact that the Government will ultimately pay the bill through reimbursement confers no immunity from hotel taxes on the Federal traveler. In those rare cases where the Government will directly pay for accommodations, local law should be checked for a possible exemption. A few jurisdictions provide an exemption from hotel taxes to Federal travelers. This is, however, a matter of State legislative grace rather than Federal law. For the member or civilian employee traveling on a reimbursable basis, "certificates of exemption" should not be issued or used unless there is a known specific tax exemption for Federal travelers in the local law of the place visited. In the same manner, a Federal traveler normally is not exempt from State sales, meal, or car rental taxes merely because his expenses are reimbursed by the Federal Government.

0632 LIABILITY OF MILITARY PERSONNEL AND DEPENDENTS FOR STATE AND LOCAL TAXES

a. In general. There is no general exemption for military personnel or dependents from State and local taxation. Military personnel are provided some relief by the Service Member's Civil Relief Act (SCRA), which limits the right of States to tax military income and motor vehicles owned by military personnel. Generally, the tax provisions of the SCRA do not apply to dependents, who are fully subject to State and local taxation wherever they reside.

b. Income taxes

(1) States and localities may tax income of three classes of people: (a) domiciliaries, who are legal residents of the State and taxable on their worldwide income; (b) statutory residents, who, regardless of their domicile, have actually lived in the State for a prescribed period and are taxable on their worldwide income; and (c) nonresidents, who are taxable only on income from sources in the State.

(2) SCRA states that a military member does not acquire residence or domicile in a State merely because he is present there due to military orders, nor lose domicile in a State merely because of absence due to military orders. See 50 U.S.C. App. § 571. Thus, a member cannot be a "statutory resident" of a State when present due to military orders. Members are either domiciliaries of a State and fully taxable there, or nonresidents taxable only on income from sources in the State. For this purpose, military pay is sourced in the member's State of domicile. A member domiciled in one State and stationed in a second State is taxable by the second State only on income other than military pay which is earned in that State. Examples include income from outside jobs and interest earned on local bank accounts. The member's home State, however, could tax both military pay and the income earned in the second State. Some States allow credits for tax paid in another State to prevent double taxation.

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(3) Some States do not tax their domiciliaries when they are living outside the State. Members domiciled in such States may avoid all State income taxes on their military pay. These States often have technical requirements for nonresidence which members must be careful to observe in order to maintain exemption. Restrictions may include a minimum period of absence from the State to begin nonresidence, a maximum visiting period allowed in the State, or a requirement that the member maintain a permanent home outside the State or not maintain a permanent home inside the State. Barracks, Bachelor Quarters, and shipboard quarters are sometimes not considered a permanent home for these purposes.

(4) A member's domicile normally starts out as the State where he lived before entering the service. Members may, however, change their domiciles voluntarily. The SCRA merely prevents involuntary changes. The legal concept of domicile has two elements: (1) presence in a State; and (2) intent to permanently treat that State as "home" by remaining there or consistently returning there after absences. For a member validly to change domicile, he must meet both tests. Thus, it is not possible to validly declare domicile in a State where the member has never lived. Also, to ensure respect for a choice of domicile, members should retain all possible contacts, such as real property ownership, voter registration, driver's licenses and vehicle registrations, and professional licenses, with the chosen State to show intent to return there. Each State may test domicile separately. If contacts are inconsistent, it is possible for a member to be held a domiciliary of more than one State and subjected to multiple taxation. Members with domicile problems should be referred to a legal assistance attorney.

(5) Dependents, unlike members, are subject to State tax residency laws. They often will be statutory residents of whatever State they happen to live in, and will be fully subject to that State's income tax laws. If they retain legal domicile in some other State, they may be fully taxable by that State as well. Further, some States use the income of the military member to set the rate at which the dependent's income will be taxed. These schemes have been ruled to be in compliance with the SCRA.

c. Personal property taxes and vehicle registration

(1) Non-business personal property of members generally is taxable only in the State of domicile. See 50 U.S.C. App. § 571.

(2) If a non-business vehicle owned by a member is properly registered in the State of domicile, no other State may require its registration there. If not properly registered in the State of domicile, the vehicle must be registered where the member actually resides. That State may assess only such fees as are necessary for issuance and administration of the registration. Fees or excises in lieu of property taxes are not allowed. This does not, however, apply to sales taxes, which have been held to be outside the scope of the SCRA.

(3) Registration in any State other than the State of domicile or the State of current residence generally is invalid. Thus, if a member does not maintain registration in his State of domicile, he must re-register the vehicle after each interstate PCS move.

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(4) Vehicles owned by dependents are subject to tax and registration wherever the vehicle is located. Vehicles jointly owned with dependents may be taxed by both the member's State of domicile and the State where the vehicle is located. In most cases, however, the member's State of domicile will not tax the vehicle because most ad valorem property taxes depend on the presence of the property in the jurisdiction. Some States exempt members' jointly owned vehicles from taxation.

d. Assistance. Assistance for individual members with State and local tax problems is available from legal assistance attorneys. If commanders become aware of problems of general application, those problems may be forwarded to OJAG (Code 16) for examination by the Armed Forces Tax Council per SECNAVINST 5840.8 (series).

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WAIVER OF EXTRADITION

I, _____, U.S. Navy (U.S. Marine Corps), having been advised of my rights to formal extradition as provided for in JAGMAN, section 0604, by _____ [name of military or civilian attorney] of _____ [address of attorney], waive such rights and agree to, accompany _____, a representative of the State of _____, into the territorial limits of said State. I have been advised that the crime which I am charged to have committed in the State of _____ is as follows:

_____
[Signature]

WITNESSED:

_____
[Signature of witness]

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DELIVERY AGREEMENT

In consideration of the delivery of _____ [name of person delivered], U.S. Navy/Marine Corps, to _____ [State representative], at _____ [physical location], for trial upon the charge of _____, I hereby agree pursuant to the authority vested in me as _____ that _____ [name of person delivered], U.S. Navy/Marine Corps will be transported to the State of _____ without expense to him or the U.S. and that the Commanding Officer of _____ will be notified immediately of the outcome of the trial and that the said _____ [name of person delivered], will be returned to the command, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the U.S. or to the person, delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon disposition of the case, provided that the Department of the Navy shall then desire his return.

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5800
Ser
(Date)

From: Commanding Officer
To: Office of the Judge Advocate General (Code 14)

Subj: DELIVERY REFUSED TO _____ [STATE, LOCAL, etc.] AUTHORITIES ICO _____ [RANK, FULL NAME, SSN, U.S. NAVY/MARINE CORPS]

Ref: (a) (Previous telephone call or message notification to OJAG Code 14)
(b) JAGMAN, § 0610

Encl: (1) Copy of warrant of arrest

1. As reported by reference (a), and in accordance with reference (b), report is made that upon presentation of a valid warrant of arrest charging violation of _____ [crime charged], _____ [name of accused] was refused delivery to _____ [sheriff, etc., of county, State, etc.] on _____ [date] because _____ [explanation of extraordinary circumstances].

2. Enclosure (1) is forwarded for information.

_____
[Signature]

Copy to:
ISIC
[For USN - NPC]
[For USMC - CMC(JAM)]

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CHAPTER VII

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CHAPTER VII

LEGAL ASSISTANCE

0701 SCOPE

a. This chapter provides information concerning the Department of the Navy (DON) legal assistance program. Additional regulations are contained in the Legal Assistance Manual, JAGINST 5801.2 (series), and other related directives.

b. The DON legal assistance program provides free attorney assistance to service members, their dependents, and other eligible clients regarding personal legal matters. The term "dependents" is used interchangeably with the term "family members" in this manual. "Family members" or "dependents" are those persons identified in the sponsor's service record and/or who possess a valid U.S. Uniformed Services Identification and Privilege Card.

c. The legal assistance program promotes increased readiness of active duty and reserve members of the Naval service, and enhances the morale and quality of life for military personnel, family members, and other eligible clients, through provision of in-office attorney advice, outreach programs, referral services, and vigorous preventive law activities.

d. Legal assistance is not separately funded; the program is authorized, not mandated, by Congress. See 10 U.S.C. § 1044. Accordingly, all legal assistance services are provided subject to availability of staff legal resources.

0702 SUPERVISION OF LEGAL ASSISTANCE

a. The DON legal assistance program is implemented and supervised by the Judge Advocate General (JAG). It is administered in the Navy by the Chief of Naval Operations (CNO) (N09J) and in the Marine Corps by the Commandant of the Marine Corps (CMC) (Code JA).

b. Commanding officers of Naval Legal Service Offices (NLSO) and Region Legal Service Offices (RLSO), senior staff judge advocates to officers exercising general court-martial convening authority, and Marine Corps judge advocates at Marine Corps installations, designated by the CMC (Code JA), shall oversee the legal assistance practice within their respective chains of command, and have broad authority to ensure that services are provided commensurate with resources available.

0703 LEGAL ASSISTANCE PROVIDERS

Legal assistance is provided at all NLSOs, NLSO Detachments, and NLSO Branch Offices. Legal assistance services may also be available at other legal offices and from Naval and Marine Corps Reserve personnel and units. Marine Corps legal assistance offices are designated by the CMC (Code JA) at certain Marine Corps installations.

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0704 LEGAL ASSISTANCE ATTORNEYS

A legal assistance attorney is a judge advocate or civilian attorney authorized by the JAG, or by his designated representatives, including, for Marine Corps personnel, the CMC (Code JA), to perform legal assistance functions. He represents the interests of the individual client concerning personal legal matters.

0705 NON-LAWYER PERSONNEL

Non-lawyer legal officers, legalmen, independent duty legalmen, and legal clerks may assist attorneys, but they may not provide legal advice or provide services that call for the professional judgment of an attorney. Non-lawyer personnel may provide assistance not requiring the attention of an attorney, such as notarizations and the preparation of routine powers of attorney using attorney approved forms.

0706 PERSONS ELIGIBLE FOR LEGAL ASSISTANCE

a. Members of the armed forces on active duty for 30 days or more. Legal assistance is intended primarily for active duty personnel, including Reservists and members of the National Guard on active duty for 30 days or more. For reservists on active duty for less than 30 days, see sections 0706 (b)(4) and 0706 (b)(5).

b. Other persons eligible. As resources permit, legal assistance may also be provided to the following categories of people in the order listed:

(1) Family members of active duty personnel and of personnel who died while on active duty.

(2) Members and former members entitled to retired or retainer pay, or equivalent pay.

(3) Family members of retired members and family members of deceased retired members.

(4) Reservists on active duty for single periods of 29 days or less and their family members may be provided legal assistance in emergency cases.

(5) For the purpose of enhancing the readiness of Reserve personnel for mobilization, pre-mobilization legal counseling and assistance may be provided to active duty or inactive Reserve personnel consistent with mobilization readiness needs. Pre-mobilization assistance normally will consist of drafting or updating wills, advance medical directives, and powers of attorney. Other assistance may be provided if it relates to recall or mobilization. Examples of such assistance include advice concerning rights under the Service Members Civil Relief Act (SCRA) or the Uniformed Services Employment and Reemployment Rights Act (USERRA). Pre-mobilization legal assistance services are not authorized for family members.

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(6) Members of Reserve components following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority, as determined by the Secretary of Defense, for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

(7) Family members of members of the Reserve components listed in subsection (6) above.

(8) Civilian personnel who are U.S. citizens, other than local hire employees, employed by, serving with, or accompanying the Armed Forces of the U.S., when they are assigned to a foreign country or to a vessel or unit of the Armed Forces of the U.S. deployed in excess of 30 days.

(9) Family members accompanying authorized civilians listed in subsection (8) above.

(10) Members of allied forces and their family members in the U.S., serving with the Armed Forces of the U.S.

(11) A 20/20/20 un-remarried former spouse as defined in 10 U.S.C. § 1072.

(12) Spouses, former spouses, and children who are victims of abuse by members losing the right to retired pay under 10 U.S.C. § 1408(h).

(13) Dependents of members separated for dependent abuse consistent with the transitional compensation provisions of 10 U.S.C. § 1059.

(14) Other persons authorized by the JAG.

0707 PERSONAL AND PRIVILEGED CHARACTER OF SERVICE

a. In general. Information and files pertaining to legal assistance clients are private and privileged under law and applicable professional rules and guidelines. Such information and files shall not be disclosed to anyone by the attorney providing legal assistance, except upon the specific permission of the client or when the attorney determines that disclosure is authorized or required by law or applicable rules of professional conduct. Disclosure of such information cannot be authorized or made lawful by order of superior military authority.

b. Information requests by commanding officer. After the formation of an attorney-client relationship, information concerning a service member's appointments or meetings with a legal assistance attorney or legal staff assistant may not be disclosed, unless an exception to the attorney-client privilege applies or the client gives informed consent.

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0708 LEGAL ASSISTANCE SERVICES

a. Standard services. Advice or service regarding the following matters are normally available to eligible persons but may be limited due to availability of a qualified attorney or other resources:

(1) Deployment briefings and assistance:

(a) Pre-deployment briefings.

(b) Pre-mobilization briefings.

(c) Demobilization briefings.

(2) Family Law/Domestic Relations:

(a) Divorce, dissolution, annulment counseling, and advice.

(b) Separation agreement, divorce pleadings, counseling, and advice (drafting not required).

(c) Nonsupport/support counseling, advice, and document drafting (service obligations).

(d) Child custody, support, and visitation counseling and advice.

(e) Paternity counseling and advice.

(f) Adoption counseling and advice.

(g) Navy/DoD adoption reimbursement.

(h) Guardianship counseling and advice.

(i) Page 2 dependent designation.

(j) Early return of dependents when assigned overseas.

(k) Military family care plan counseling and advice.

(3) Consumer law:

(a) Bankruptcy counseling and advice.

(b) Credit collection, indebtedness issues counseling, advice, and action to resolve.

(c) Car contracts issues counseling, advice, and action to resolve.

(d) Government indebtedness, involuntary allotment, garnishment issues, counseling, advice, and action to resolve.

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(e) Credit report counseling and advice, Federal consumer law statutes counseling and advice.

(f) Consumer fraud/ID theft issues counseling, advice, and action to resolve.

(g) Personal contract review, excluding real estate.

(h) Landlord/tenant issues counseling, advice, and action to resolve.

(4) Estate planning counseling and advice:

(a) Will counseling and advice.

(b) Basic will drafting.

(c) Advanced medical directives, living will counseling, advice and drafting.

(d) Durable power of attorney counseling, advice and drafting.

(e) Testamentary trust for minors, pre-residuary counseling, advice, and drafting.

(f) Special needs trust counseling and advice.

(g) Service Members Group Life Insurance/insurance counseling, advice, and beneficiary designation.

(h) Other survivor benefits counseling and advice.

(i) Will/ancillary document execution.

(5) Military rights and benefits advice:

(a) Service Members Civil Relief Act counseling, advice, and drafting correspondence.

(b) Uniformed Services Employment and Reemployment Rights Act counseling and advice.

(6) Powers of Attorney counseling, advice and drafting.

(7) Notary services.

(8) Service member immigration and naturalization counseling and advice.

b. Other services. Legal assistance offices may provide additional services not specifically prohibited by regulation if the legal assistance providers are competent to provide such services.

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0709 LIMITATIONS ON SCOPE OF LEGAL ASSISTANCE SERVICES

a. Personal legal matters only. Legal assistance is authorized for personal legal affairs only. Legal advice and assistance will not be provided regarding business ventures or regarding matters that are not of a personal nature.

b. Advice or assistance in official military matters. Legal assistance duties are separate and apart from responsibilities of trial counsel, defense counsel, or others involved in processing courts-martial, nonjudicial punishments, administrative boards or proceedings, and investigations. Members accused or suspected of offenses or conduct that may result in disciplinary or judicial proceedings under the Uniform Code of Military Justice (UCMJ), or processing for administrative discharges, will be referred to a defense counsel.

c. Representation of opposing parties or interests. If two or more eligible persons with conflicting interests seek advice from the same legal assistance office on the same matter, the party first establishing an attorney-client relationship will be provided representation. The legal assistance office will then follow the guidance contained within JAGINST 5801.2 (series) on referral of the conflicted party(ies) to an alternate source of assistance.

d. Proceedings involving the U.S. Legal assistance attorneys shall not represent or assist an individual in a matter in which the U.S. has a direct and substantial interest, whether or not the Government's position is adverse to that of the individual, except as permitted by JAGINST 5801.2 (series) or other prior and specific authorization of the JAG or his designee, Deputy Assistant Judge Advocate General (DAJAG) (Legal Assistance) (Code 16) or the CMC (Code JA).

e. Telephone inquiries. Legal assistance ordinarily will not be provided over the telephone except in unusual or compelling circumstances.

f. Advice to third parties. The privileged attorney-client relationship requires personal and private communication. Except when the client is unable to communicate adequately, advice or assistance will not be provided through third parties. For example, each will client must be interviewed personally by a legal assistance attorney prior to execution of the will. When command representatives seek information or assistance on behalf of service members, they shall normally be instructed to have the service member obtain a legal assistance appointment. Bona fide requests for command services shall be referred to the judge advocate normally charged with providing advice and assistance to the command concerned.

0710 REFERRALS AND FEES

a. Referral to a civilian attorney or law firm. The legal assistance attorney may determine that the best interests of the client will be served by referring the case to a civilian attorney or law firm. Should referral be necessary, payment of legal fees is the client's responsibility. The Government will not reimburse the individual or pay any expenses associated

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with the referral.

b. Prohibition of fees. Services provided in the DON legal assistance program are at no cost to eligible personnel. All legal assistance personnel are prohibited from accepting or receiving from eligible clients any fee or compensation other than Government compensation. Reserve personnel not on active duty are prohibited from receiving fees or compensation for the same matters about which they consulted with or advised their legal assistance clients, regardless of the reservist's duty status when the legal assistance was provided.

0711 EXPANDED LEGAL ASSISTANCE PROGRAM

a. General. Under the Expanded Legal Assistance Program (ELAP), as approved by the JAG or his designee, DAJAG (Legal Assistance) or the CMC (Code JA), designated legal assistance attorneys may provide in-court representation to certain categories of clients who cannot afford private attorney fees. Additional information on ELAP is contained in JAGINST 5801.2 (series).

b. Eligibility. Persons eligible:

(1) Active duty military personnel in pay grades E3 and below.

(2) Active duty military personnel in pay grade E4 with family members.

(3) Family members of personnel in pay grades E-4 and below.

(4) Other active duty military personnel and their family members who are unable to afford an attorney without substantial financial hardship may be eligible if approved by the JAG or his designee, DAJAG (Legal Assistance) or the CMC (Code JA).

(5) Service members with cases that involve a significant issue that affects other service members, if approved by the JAG or his designee, DAJAG (Legal Assistance) or the CMC (Code JA).

0712 IMMIGRATION AND NATURALIZATION

a. General. Laws governing immigration are set by Congress and are found in the Immigration and Nationality Act and implementing regulations. The U.S. Citizenship and Immigration Service (USCIS), an agency of the Department of Homeland Security, administers and enforces U.S. immigration laws.

b. Passports and visas. A passport is a document issued by a person's own country to provide identification necessary to leave and return to that country. By itself, a passport does not give the holder permission to enter another country. State Department Consular offices overseas issue visas to aliens wishing to enter the U.S. A visa *permits* travel to U.S. entry points. U.S. immigration officials at the border determine whether holders of visas are properly documented and otherwise eligible to enter the U.S. and for what period of time. Aliens who are U.S. service members do not need visas to

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enter the U.S.; they need only show their military identification and papers.

c. Acquiring citizenship. The DON has no authority to grant alien members either citizenship or lawful permanent resident status. An alien who has served in the U.S. Armed Forces does not automatically become a citizen. However, the Navy and Marine Corps have implemented programs designed to assist service members in obtaining citizenship through qualifying military service. Navy and Marine Corps legal assistance offices provide complete application preparation advice and support for those qualified members of the Armed Forces that desire to apply for citizenship. This program can also track the status of the application until completion.

d. Assistance. Immigration and Naturalization law and policy is subject to frequent changes. Timely guidance is maintained under "Legal Assistance for Sailors" which can be found in the Personal Development Tab on the NKO home page at https://wwwa.nko.navy.mil/portal/splash/index.jsp. For further information and advice, contact:

(1) In the U.S., the nearest Bureau of Citizenship and Immigration Services Office.

(2) Overseas, the nearest U.S. Consulate.

(3) Worldwide, the nearest Legal Assistance Officer. For headquarters assistance contact OJAG (Code 16), 202-685-4642 or DSN 325-4642, or Legal Assistance Branch, Marine Corps Judge Advocate Division, 703-614-1266 or DSN 224-1266.

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CHAPTER VIII

GENERAL CLAIMS PROVISIONS

PART A -- GENERAL

0801 SCOPE

This chapter provides information about responsibilities for the supervision and management of the Navy's claims program and the investigation of claims under the various Federal claims statutes. Detailed information about the adjudication of claims under the Foreign Claims Act is in Part B. Explanations of the various claims statutes and information about adjudication are beyond the scope of this chapter and are detailed in JAGINST 5890.1 (series).

0802 RESPONSIBILITIES

a. The Judge Advocate General (JAG) is responsible for the resolution of claims arising under the Federal Tort Claims Act, Military Claims Act, Nonscope Claims Act, Military Personnel and Civilian Employees' Claims Act, Foreign Claims Act, International Agreements Claims Act pertaining to cost sharing of claims pursuant to international agreements, Medical Care Recovery Act, Federal Claims Collection Act, and postal claims.

b. The Deputy Assistant Judge Advocate General (DAJAG) (Claims and Tort Litigation) is the manager of the Navy claims system that evaluates, adjudicates, and provides litigation support for claims arising under the acts listed above. He is responsible to the JAG for the management of that system. The claims system consists of attorneys and support personnel assigned to the Claims and Tort Litigation Division (Code 15) of the Office of the Judge Advocate General (OJAG). Code 15 personnel responsible for processing tort claims are located at the Tort Claims Unit (TCU), Norfolk, Virginia. Code 15 personnel responsible for processing personnel claims are located at the Personnel Claims Unit (PCU), Norfolk, Virginia, and at the PCU Branch Office, Pearl Harbor, Hawaii. Personnel responsible for processing claims under the Medical Care Recovery Act are located at Medical Care Recovery Units (MCRU's) in Norfolk, Virginia; Pensacola, Florida; and San Diego, California.

c. Commanding officers of commands receiving claims are responsible for complying with the guidance on investigations in sections 0803 and 0804 and the guidance on handling and forwarding claims found in section 0806.

d. Admiralty claims are discussed in Chapter XII. The DAJAG (Admiralty and Maritime Law) is responsible for adjudication of all claims, for and against the Navy, within admiralty jurisdiction. See JAGMAN Chapter XII of this Manual.

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0803 INVESTIGATIONS - GENERALLY

Chapter II of this Manual addresses administrative investigations. Whenever an investigation is conducted primarily for claims purposes, it shall be conducted as a litigation report investigation in accordance with section 0209 of this Manual. As noted in section 0209, such an investigation is conducted under the direction and supervision of a Department of the Navy (DON) attorney in anticipation of litigation and the investigation is privileged.

0804 CLAIMS - GENERALLY

a. Claims against the U.S. Claims against the U.S. shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, payment is made as quickly as possible. Similarly, claims not payable will be processed promptly and claimants advised of the reasons for the denial.

b. Claims in favor of the U.S. Potential claims in favor of the U.S. will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued to resolution.

0805 CLAIMS - ACTION BY RECEIVING COMMAND

a. Record date of receipt. The first command receiving a claim shall stamp or mark the date of receipt on the letter or claim form. The envelope in which the claim was received shall be preserved.

b. Determine the military activity involved. The receiving command shall determine the Navy or Marine Corps activity most directly involved with the claim, usually the command where the incident is alleged to have occurred, and forward a copy of the claim to that activity. The original claim and the transmittal letter if a copy is forwarded to another command for investigation shall immediately be sent to the Tort Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989.

c. Initiate an investigation. The command most directly involved with the claim, usually the command where the incident is alleged to have occurred, shall immediately convene a litigation report investigation in accordance with Chapter II of this Manual. An advance copy of the investigation shall be forwarded to the Torts Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989. Waiting until endorsements have been obtained before providing a copy of the investigation to the TCU is neither required nor desirable. The facts of the incident must be made known to cognizant claims personnel as soon as possible.

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0806 CLAIMS - ACTION WHEN SUIT FILED

Commencement of any civil action against the U.S. involving the Department of the Navy (DON) seeking money damages for personal injury, property damage, or death, that comes to the attention of any officer or employee of the Navy in connection with his official duties, shall be reported immediately to OJAG (Code 15). Civil actions involving Admiralty incidents shall be reported immediately to OJAG (Code 11). OJAG (Code 14) shall be immediately notified of the initiation of any litigation involving the DON with respect to Freedom of Information Act (FOIA) and Privacy Act (PA); actions challenging military personnel programs, policies and decisions; and suits against service members for official actions allegedly violating another's constitutional rights. The Office of General Counsel (OGC) shall be immediately informed of all other lawsuits involving the DON.

PART B -- FOREIGN CLAIMS

0807 DEFINITION

Foreign claims are demands for payment against the U.S., presented by inhabitants of foreign countries, for property damage, personal injury, or death occurring outside the U.S. and caused either by members or civilian employees of the U.S. Armed Forces or by the non-combat activities of these forces in foreign countries.

0808 STATUTORY AUTHORITY

a. General. The Foreign Claims Act (FCA), 10 U.S.C. § 2734, authorizes filing, investigating, processing, and settling foreign claims under such regulations as the Service Secretary shall prescribe. The regulations in this chapter implement the FCA within the DON.

b. Purpose. The purpose of the FCA is to "promote and maintain friendly relations through the prompt settlement of meritorious claims" in foreign countries.

c. Construction. These regulations should be broadly construed to carry out the FCA's statutory purpose. The U.S. generally accepts responsibility for almost all damage, injury, or death to local inhabitants caused either by members or civilian employees of the U.S. Armed Forces or by the non-combat activities of our armed forces in foreign countries. Proof of fault is not required; rather, causation of the harm is determinative. Meritorious claims should be settled fairly and promptly, without regard to whether the acts giving rise to them are mistaken, negligent, intentional, or even criminal.

0809 FILING THE CLAIM

a. General. A claim must be presented in writing to the appropriate U.S. military authorities within 2 years after the incident giving rise to the claim. It must: (1) state time, date, place, and nature of the incident; (2)

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state the nature and extent of any injury, loss, or damage; and (3) request compensation in a definite amount, in the local currency.

b. Presentation of the claim. A claim may be presented to any U.S. authority or to foreign government authorities if authorized under a Status of Forces Agreement or other applicable treaty or agreement. Claims shall be promptly transferred to the appropriate authorities for processing.

c. Appropriate authorities

(1) General. The commanding officer of the organization or individual(s) whose activities gave rise to the claim has authority to process claims under these regulations, subject to the restrictions of subparagraphs (2) through (4) of this section. A commander who receives a claim subject to the restrictions of subparagraphs (2) through (4) shall forward the claim promptly to the appropriate authority and shall provide assistance necessary to investigate and adjudicate the claim.

(2) Claims arising in Italy. The Commanding Officer, Region Legal Service Office (RLSO), Europe and Southwest Asia (EURSWA), has authority to process all claims under the Foreign Claims Act arising in Italy.

(3) International agreements. Article VIII of the NATO Status of Forces Agreement and similar provisions of status of forces agreements with individual foreign countries may restrict the use of the FCA by authorizing foreign government officials to process claims under the status of forces agreement that would otherwise be cognizable under the FCA. Accordingly, pertinent directives of the Region Commander shall be consulted. Claims shall not be processed under these FCA regulations until it has been determined that such action is authorized.

(4) Single-service claims responsibility. DODD 5515.8 assigns "single-service claims responsibility" to individual military departments for processing claims in specified foreign countries. Claims shall not be processed by Navy activities under this chapter until it has been determined that such action is authorized by DODD 5515.8.

d. Form of the claim. A properly completed Standard Form 95 signed by the claimant or an authorized agent, or other written demand containing the same essential information, is sufficient. A claim may be signed by either the injured party or an authorized agent, such as a lawyer. Agents must show their title or legal capacity and present evidence of their authority to sign the claim. A claim may be considered if it describes the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm.

e. Amending the claim. A claim may be amended at any time prior to final settlement or denial. Amendments must be written and signed by the claimant or an authorized agent.

f. Statute of limitations. A claim must be filed within 2 years after it accrues. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the incident giving rise to the claim. Generally, to compute the statutory time period, the day the claim accrued

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should be excluded and the day the claim was filed should be included.

0810 CLAIMS PAYABLE

a. General. For a claim to be payable under the FCA, both the claimant and the incident giving rise to the claim must be covered by the statute.

b. Covered claimants. The FCA applies only to "inhabitants" of foreign countries, who are defined as persons, corporations, or other Government or business entities, whose usual place of abode or activity is in a foreign country. "Inhabitant" has a broader meaning than "citizen" or "national." Foreign citizenship or legal domicile in the country in which the claim arose is not required. Therefore, the FCA applies to foreign nationals visiting or traveling in a foreign country in which they do not reside. Examples of covered claimants are:

(1) Foreign nationals residing in a foreign country.

(2) Foreign nationals visiting or traveling in a foreign country where they do not reside.

(3) U.S. citizens residing in a foreign country, if they are inhabitants of a foreign country and are not there as U.S. service members or civilian employees, or their sponsored dependents.

(4) A corporation or other organization doing business in a foreign country on a permanent basis, even if organized under United States law.

(5) Foreign governments and their political subdivisions, including the equivalents of State, county, and city governments, unless excluded by waiver provisions of an international agreement.

c. Covered incidents. Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property may be settled under these regulations, if the incident occurred outside the U.S. and was caused by either the non-combat activities of the U.S. armed forces or the actions of a member or civilian employee of those forces. Negligence is not a prerequisite, but causation is required.

d. Scope of employment. As a general rule, scope of employment is immaterial. If, however, a claim arises from the act of a U.S. employee who is an indigenous person, prisoner of war, or interned enemy alien, scope of employment is a prerequisite to U.S. responsibility. Claims arising from the operation of a U.S. armed forces vehicle by a U.S. employee who is an indigenous person, prisoner of war, or interned enemy alien should be settled if local law imposes liability on the owner of the vehicle under the circumstances.

0811 CLAIMS NOT PAYABLE

a. Claims of insurers and other subrogees.

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b. Claims of sponsored dependents accompanying members and civilian employees of the U.S. armed forces, or U.S. national civilians employed by either the U.S. Government or a civilian contractor performing an agreement with the U.S. Government.

c. Claims of foreign military personnel suffering injury or death incident to a joint military mission or exercise with U.S. armed forces, or as a result of the actions of a member or civilian employee of the U.S. armed forces, acting within the scope of employment, unless a treaty specifically provides for recovery.

d. Claims of civilian employees of the United States, including local inhabitants, injured incident to their employment. Compensation for such injuries is separately provided in Federal statutes and agreements with foreign governments.

e. Claims of national governments or their political subdivisions engaging in combat with the U.S. or its allies.

f. Claims of a national or a nationally controlled corporation of a country engaging in combat with the U.S. or its allies, unless it is determined that the claimant is friendly.

g. Claims resulting from combat activities, except that claims arising from an accident or malfunction incident to aircraft operations, including airborne ordnance, occurring while preparing for, going to, or returning from a combat mission may be paid.

h. Claims previously paid or denied.

i. Claims purely contractual in nature.

j. Claims involving private contractual and domestic obligations of individuals.

k. Claims based solely on compassionate grounds.

l. Claims for paternity or illegitimacy.

m. Claims payable under other Federal statutes.

n. Claims for damage caused by Naval vessels, unless payment is specifically authorized by OJAG (Code 11) under section 1216 of this Manual.

0812 COMPUTATION OF THE AMOUNT OF PAYMENT

a. General. The local laws, standards, and customs of the country where the incident occurred control when computing damages for personal injury, death, or damage to property.

b. Compensation. An appropriate award is generally limited to reasonable compensation for the injury, death, or property damage or loss only, and does not extend to payment of punitive damages, interest, costs, attorney's fees,

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bail, or any other such charges, regardless of whether they are allowed by local laws, standards, or customs. In the cases of personal injury or death, compensation may include medical expenses, pain and suffering, burial expenses, loss of society and companionship, and lost income. In cases of permanent disability, compensation may also include diminished earning capacity and costs of medical care in the future. In cases of property damage, compensation may include cost of repair, cost of replacement or diminished value, and loss of use of the property.

c. Apportionment. When there are multiple claimants or beneficiaries for a single award, the amount approved should be apportioned among them in the proportions prescribed by local laws, standards, and customs.

d. Joint liability. When two or more parties are liable for causing the same harm, they may be jointly liable for payment of compensation. Any amount paid by or on behalf of such a party should be deducted from the amount allowed under these regulations.

e. Insurance. Only insurance coverage that has been paid or is reasonably likely to be paid to the claimant by or on behalf of the U.S. by reason of the same injury, death, or damage or loss, should be deducted from the amount allowed under these regulations. Otherwise, insurance coverage should not be considered.

f. Negligence of the claimant. A claimant's negligent or wrongful act contributing to the injury, death, or damage that is the basis of the claim, may bar the claim entirely (contributory negligence) or diminish the claim proportionately (comparative negligence). The local laws, standards, and customs of the place where the incident occurred should be applied to determine whether and in what amount to allow a claim.

g. Currency. The amount of the award should be computed in the local currency of the place where the incident occurred or in the local currency of the place where the claimant presently resides, if different from the place where the incident occurred.

0813 FOREIGN CLAIMS COMMISSIONS

a. Purpose. The purpose of a Foreign Claims Commission (Commission) is to settle meritorious claims fairly and promptly. A Commission shall deny or pay, in full or in part, all claims referred to it or forward adjudication recommendations to appropriate higher authorities.

b. Authority to appoint

(1) All commanding officers of the Navy and Marine Corps have authority to appoint a Commission, unless restricted by a competent superior commander.

(2) For the purpose of the FCA and these regulations, the following officers are considered commanding officers: the JAG; the Commanding Officer of the Region Legal Service Office, EURSWA; Chiefs of Naval Missions, including Chiefs of the Naval Section of Military Missions; Chiefs of Military

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Assistance Advisory Groups, including chiefs of the naval section of such groups; and naval attaches.

c. Claims presented. A Commission may be appointed to consider each claim as presented or a standing Commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to a Commission appointed under these regulations.

d. Composition of the Commission. A Commission shall be composed of either one or three members. Alternate members may be appointed where circumstances require, and may be substituted for the principal members for specific cases by order of the appointing authority. The appointing orders should clearly indicate which member is president of a three member Commission.

e. Qualifications of members

(1) Members appointed to serve on a Commission shall be commissioned officers of the Navy or Marine Corps of sufficient grade and experience to carry out the purpose of the Commission, consistent with the FCA.

(2) Whenever possible, at least one member of the Commission should be a judge advocate. An officer of another armed force may serve on a Navy or Marine Corps Commission only with the consent of the Secretary of his Service, or a designee, and will perform duties according to these regulations. When an officer of the Navy or Marine Corps is requested to serve on a Commission of another armed force, the immediate commanding officer of such officer may determine availability pursuant to 10 U.S.C. § 2734(a).

f. Adjudicating authority

(1) General. Although a Commission may consider claims in any amount, the Commission may only deny a claim seeking an amount within the limits of the Commission's adjudication authority. Similarly, a Commission may only pay a settlement amount that is within the limits of the Commission's adjudication authority. Therefore, a claim that seeks an award in excess of the Commission's authority may be settled by the Commission only if the mutually agreed settlement amount is within the limits of the Commission's adjudication authority. The Commission shall forward recommendations to appropriate higher authorities to deny claims in excess of their authority, or to pay, in full or in part, an amount that exceeds the limits of the Commission's authority.

(2) Claims up to $20,000.00. The Commission may deny or pay, in whole or in part, claims within the following limitations:

(a) One officer Commission: $5,000.00.

(b) One officer Commission (judge advocate): $10,000.00.

(c) Three officer Commission: $10,000.00.

(d) Three officer Commission with at least one judge advocate: $20,000.00.

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(3) Claims in excess of limits or $20,000.00. Recommendations of a Commission for payment or denial of claims in excess of the limits of their adjudicating authority or in excess of $20,000.00 shall be forwarded through the appointing authority as required under sections 0815 and 0816, and shall be subject to the approval of appropriate higher authorities under the delegations of authority in section 0817.

0814 PROCESSING OF CASES

a. Action by the staff judge advocate. The staff judge advocate of the commanding officer receiving a claim for action is responsible to provide advice, guidance, and review to the commanding officer, Commission, and claims investigating officer on the policies and procedures in these regulations. This assistance may also be provided by the RLSO servicing the area in which the claim arose. Commands without a staff judge advocate assigned should request assistance from the cognizant RLSO, the next superior command with a staff judge advocate, or the nearest command with a staff judge advocate or any judge advocate assigned.

b. Action by the appointing authority. The commanding officer to whom a claim is presented, and who is authorized to take action under this chapter, is the appointing authority for the Commission to adjudicate the claim. The appointing authority shall: detail appropriately qualified members and appoint them in writing; convene an appropriate investigation or obtain the report of investigation, if one has already been conducted; refer the claim with the investigative report of the incident to the Commission for adjudication; and if applicable, receive a recommendation from the Commission for denial or payment beyond its authority, review it with appropriate legal advice, and take action or forward it as appropriate under these regulations.

c. Action by the claims investigating officer. There is no formal procedure for conducting an investigation of a foreign claim. The requirements of Chapter II of this Manual may be followed as a guide. Verbatim witness statements are not required; only the substance of their statements must be recorded. Written statements provided by witnesses should be signed, if possible. The formal rules of evidence need not be followed, and any relevant evidence, regardless of form, may be received to establish the essential facts of the incident. A report of the investigation shall be submitted to the appointing authority as soon as practicable.

d. Action by the Commission

(1) Review the claim and the investigation and, if necessary, initiate or request further investigation.

(2) Adjudicate and deny or pay the claim, in full or in part, if the amount claimed for a denial or the mutually agreed upon settlement award for an approved claim is within the limits of the Commission's adjudication authority. Otherwise, the Commission will need to make a recommendation to higher authority. The decisions of the Commission shall be determined by a majority vote.

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(3) Negotiate with the claimant for settlement of the claim within the limit of adjudicating authority.

(4) Report its decision or recommendation and the reasons therefore to, or through, the appointing authority, as required under these regulations.

(5) Prepare the settlement agreement and release on the forms at Appendix A-8-a of this Manual, when approving the claim. Claimant must agree to accept the amount paid in full satisfaction of the claim.

(6) Prepare the written notification to the claimant, explaining its decision to deny or pay the claim, in full or in part, or explaining the Commission's recommendation to higher authority.

(7) Pay the claim in the currency of the country where the claimant resides. This may be subject to approval by the appointing authority or other higher authority under these regulations.

(8) Obtain a signed release upon payment of any claim and forward same through the appointing authority to the disbursing officer.

0815 REPORTS REQUIRED

The Commission shall make a written report of each claim, to include:

a. Appointing order and any modifications;

b. Claim document;

c. Investigative report;

d. Summaries of witness testimony or witness statements signed by the witnesses, if possible;

e. The settlement agreement and release when payment is approved or recommended;

f. Proposed notification to the claimant; and

g. Memorandum containing the following information:

(1) Dates of the proceedings.

(2) Amount claimed, stated in the local currency and the conversion into U.S. currency at the official rate of exchange on the date of initial consideration of the claim.

(3) Brief summary of essential facts, including: date of incident, date claim was filed, circumstances of incident, nature and extent of injury or damage, and basis for determining whether the claim is payable.

(4) Brief evaluation of the applicable local laws, standards, and

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customs.

(5) Date of adjudication by the Commission.

(6) Amount of any award or recommended award, stated in the local currency and the conversion into U.S. currency at the official rate of exchange on the date of the adjudication.

(7) Statement of the decision or recommendation of the Commission and an explanation of the basis.

0816 FORWARDING REPORTS

a. Claims within adjudicating authority. When a Commission pays or denies a claim within its adjudicating authority, the original of the report and all related papers shall be forwarded to the appointing authority.

b. Claims in excess of adjudicating authority. When a Commission recommends payment or denial of a claim in excess of its adjudicating authority, the original of the report and all related papers shall be forwarded to the appointing authority to retain, and a copy shall be forwarded through the appointing authority to the appropriate higher authority for action under the delegations of authority in section 0817.

0817 ACTION ON FORWARDED CLAIMS

When payment or denial of a claim in excess of the adjudicating authority of the Commission is recommended, the following officers may approve or disapprove the recommendation and the claim, in whole or in part, pay the claim, or return the claim with instructions to the appointing authority or the Commission:

a. Claims up to $50,000.00. The Deputy Judge Advocate General, the Assistant Judge Advocate General (AJAG) (Civil Law), or the DAJAG (Claims and Tort Litigation), or, for claims arising in Italy, the Commanding Officer, RLSO, EURSWA.

b. Claims from $50,000.00 through $100,000.00. The JAG; and

c. Claims in excess of $100,000.00. The Secretary of the Navy may pay the first $100,000.00 and report the excess to the Comptroller General for payment. See 10 U.S.C. § 2734(d).

0818 NOTIFICATION TO THE CLAIMANT

The claimant shall be notified promptly by the Commission in writing of approval or denial of claims within the adjudicating authority of the Commission, or of referral of claims in excess of the adjudicating authority of the Commission to higher authority. Notification should inform the claimant of the approved recommendation or action of the Commission and briefly explain the reasons therefore. The claimant shall not be informed

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of the amount of the recommendation to higher authority for payment and shall not be shown the report of the Commission. The notification shall also inform the claimant of the right to request reconsideration of the adjudication of the claim. When resources permit, the letter of notification should be translated into claimant's language, preferably using the interlinear method. When final action on a claim is taken by an officer superior to the appointing authority of the Commission, the notification letter should be forwarded through the appointing authority, with a copy to the Commission.

0819 RECONSIDERATION, APPEAL, AND SUIT

a. Reconsideration

(1) A claim may be reconsidered by the original Commission, a successor Commission, or a newly appointed Commission, upon written request from the claimant, upon the original Commission's own initiative, or upon instructions from a superior officer authorized to take action on the claim, when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or based on evidence subsequently received.

(2) If the Commission concludes that the original recommendation was incorrect, it will modify the decision or forward a supplemental recommendation to or through the appointing authority for action. If the Commission concludes that the original recommendation was correct, it will affirm the decision and forward a memorandum for information to or through the appointing authority. Notification to claimant will be as prescribed in these regulations.

(3) Claimant's request for reconsideration of the decision of the Commission or the action of a higher authority should indicate the legal or factual basis asserted as grounds for relief. When action on reconsideration has been completed and approved, the appointing authority shall notify the claimant that such action is final and conclusive by law. See 10 U.S.C. § 2735.

b. Appeal. There is no right of appeal under this statute.

c. Suit. The U.S. has not consented to be sued under this statute.

0820 PAYMENT

a. Documentation. When a recommendation for payment within the adjudicating authority of the Commission has been approved by the appointing authority, or when a larger award has been approved by appropriate higher authority, the appointing authority shall submit the original and one copy of the approved report of the Commission to the nearest Navy or Marine Corps disbursing officer for payment of the claim. If no Navy or Marine Corps disbursing officer is reasonably available, then the nearest U.S. disbursing officer of any agency may be requested to pay the claim.

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b. Voucher. The command adjudicating the foreign claim is responsible for immediately mailing a legible copy of every voucher to: The Office of the Judge Advocate General (Code 64), 1322 Patterson Ave, SE, Suite 3000, Washington Navy Yard, D.C. 20374-5066.

c. Accounting data. Foreign claims are paid from a centrally managed budget with a fund citation from the NAVCOMPT Manual, Vol. II, para. 023304. The Standard Document Number (SDN) that must appear on every Foreign Claim Voucher is: "N00013$$MDA1001" where "$$" equals the last two digits of the fiscal year when the deposit is actually made. The Line of Accounting Data (LOA) that must appear on every Foreign Claim Voucher is: "AA 17+1804.12TL 420 00013 H 068892 2D +##### 00013+A1001X" where "+" is the last digit of the fiscal year when the deposit is actually made, and where "#####" is the five digit UIC of the command making the deposit.

d. Settlement agreement. A settlement agreement shall be obtained from the claimant when payment of an award is accepted. The suggested form for the settlement agreement is in Appendix A-8-a of this Manual.

e. Advance payments. Advance payments may be paid under this section.

f. Currency. Due to Federal currency restrictions, all payments under this chapter shall be made in the local currency of the country in which the claim arose or in the currency of the country where the claimant resides at the time of such payment, if different from the country where the claim arose.

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SETTLEMENT AGREEMENT

File Reference: _____

I, _____ [claimant], hereby agree to accept the sum of _____[amount] ($ [or equivalent] _____) in full satisfaction and final settlement of any and all claims which I have individually, on behalf of the next of kin of _____ [injured party], and on behalf of the estate of _____ [injured party] or may have against the United States, its officers, agents and employees, for property damage, personal injury, wrongful death, [whichever applicable] and associated losses arising from _____ [brief details of incident], and for any and all damages, injuries and losses proximate and consequent thereto.

In consideration hereof, I hereby release and forever discharge the United States, its officers, agents and employees, from all liability, claims and demands of whatsoever nature arising from the said incident.

It is understood that the amount tendered is accepted in full satisfaction and final settlement and that the award is made pursuant to the Foreign Claims Act, 10 U.S.C. § 2734, which provides for the administrative settlement of disputed claims against the United States arising from its activities, and is not to be construed as an admission of liability on the part of, but as a release of, the United States, its officers, agents and employees.

_____

[claimant] DATE

WITNESSES:

_____ _____

NAME ADDRESS

_____ _____

NAME ADDRESS

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CHAPTER IX

AUTHORITY OF ARMED FORCES PERSONNEL TO PERFORM NOTARIAL ACTS

PART A -- AUTHORITY TO PERFORM NOTARIAL ACTS

0901 SCOPE

0902 FEDERAL AUTHORITY TO ADMINISTER OATHS AND PERFORM NOTARIAL ACTS

a. Relationship to state authority
b. Authority to administer oaths with regard to military administration and military justice
c. Oaths for appointment, enlistment, or commissioning
d. Authority to act as a notary
e. No fees
f. Duties and responsibilities of notaries
g. Proof of authority
h. Legal effectiveness
i. Formats

0903 NONFEDERAL AUTHORITY TO PERFORM NOTARIAL ACTS

a. Nonfederal authority
b. Exercise of nonfederal authority
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CHAPTER IX

AUTHORITY OF ARMED FORCES PERSONNEL TO PERFORM NOTARIAL ACTS

PART A -- AUTHORITY TO PERFORM NOTARIAL ACTS

0901 SCOPE

This chapter designates individuals authorized to perform notarial acts and compiles existing laws, regulations, and guidelines on the authority of U.S. Armed Forces members and certain civilian employees to administer oaths; take affidavits, sworn statements, or depositions; take acknowledgments; and perform other notarial acts.

0902 FEDERAL AUTHORITY TO ADMINISTER OATHS AND PERFORM NOTARIAL ACTS

a. Relationship to state authority. The authority to perform notarial acts under 10 U.S.C. § 1044a is separate and apart from any authority provided by state law. Federal notarial authority may be exercised without regard to geographic limitation. Several states grant select military members the authority to render state notarial acts. Part B of this chapter describes state practice and the requirements of each state's laws. When exercising state authority, the statutory or other requirements of the jurisdiction must be strictly followed to ensure the legal effectiveness of the notarial act performed. The validity of notarial acts performed pursuant to 10 U.S.C. § 1044a is a matter of Federal law.

b. Authority to administer oaths with regard to military administration and military justice

(1) Under the authority of 10 U.S.C. § 936(a), the following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(a) All judge advocates;

(b) All summary courts-martial;

(c) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(d) All commanding officers of the Navy, Marine Corps, and Coast Guard;

(e) All staff judge advocates and legal officers, acting or assistant staff judge advocates and legal officers;

(f) All officers of the grade of O-4 and above;

(g) Executive and administrative officers;

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(h) Marine Corps officers with a Military Occupational Specialty (MOS) of 4430, while assigned as legal administrative officers;

(i) All limited duty officers (law), all legalmen E-7 and above, all independent duty legalmen, and all legalmen assigned to legal assistance offices or staff judge advocates providing legal assistance; and

(j) Persons empowered to authorize searches, for any purpose relating to a search authorization.

(2) Under the authority of 10 U.S.C. § 936(b), the following persons on active duty or performing inactive-duty training may administer oaths necessary in performing their duties:

(a) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;

(b) The president and counsel for the court of any court of inquiry;

(c) All officers designated to take a deposition;

(d) All persons detailed to conduct an investigation;

(e) All recruiting officers; and

(f) The president and recorder of personnel selection boards.

c. Oaths for appointment, enlistment, or commissioning. Under the authority of 10 U.S.C. §§ 502 and 1031, any U.S. Armed Forces commissioned officer of any Regular or Reserve component, whether or not on active duty, may administer oaths required for appointment, enlistment, or commission in the Armed Forces.

d. Authority to act as a notary

(1) Under the authority of 10 U.S.C. § 1044a, the following persons may perform the notarial acts listed in subparagraph (2) below for persons listed in section 0706 of this Manual as eligible for legal assistance, and for others as authorized in 10 U.S.C. § 1044a:

(a) All civilian attorneys serving as legal assistance officers;

(b) For the performance of notarial acts at locations outside the United States, all civilians employed by the Department of the Navy (DON) supporting legal assistance offices;

(c) All adjutants, assistant adjutants and personnel adjutants, including reserve members when not in a duty status;

(d) All officers of the grade of O-4 and above;

(e) All commanding, executive, and administrative officers;

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(f) All legal and assistant legal officers;

(g) All Marine Corps officers with MOS of 4430 while assigned as legal administrative officers;

(h) All judge advocates, including Reserve judge advocates when not in a duty status;

(i) All limited duty officers (law), all legalmen E-7 and above, all independent duty legalmen, and all legalmen assigned to legal assistance offices or staff judge advocates providing legal assistance; and

(j) All Marine Corps legal services specialists E-5 and above, while serving in legal assistance billets, when authorized by the cognizant commander.

(2) Subject to the guidance set forth in section 0906, the following acts may be performed by the persons listed above while acting as a notary:

(a) Administration of oaths, acknowledgments, affidavits, and affirmations; and

(b) Certification of copies as true.

e. No fees. Fees may not be paid or received for the administration of any oath or the performance of any notarial act under the authority of 10 U.S.C. §§ 936 or 1044a.

f. Duties and responsibilities of notaries. Persons acting as notaries under the authority of 10 U.S.C. § 1044a are governed in the performance of their duties by, and must comply with, this chapter.

g. Proof of authority. The signature of any person administering an oath or acting as a notary under the authority of 10 U.S.C. §§ 936 or 1044a together with the title of his office is prima facie evidence that the signature is genuine, that the person holds the office designated, and that he has the authority to so act.

h. Legal effectiveness. Notarial acts performed under the authority of 10 U.S.C. § 1044a are legally effective for all purposes. Oaths administered under the authority of 10 U.S.C. § 936 are legally effective for the purposes for which the oath is administered. Federal notarial authority may be exercised without regard to geographic limitation and is not dependent on any state or local law.

i. Formats. Formats recommended for taking acknowledgements and executing sworn instruments are set forth in Appendix A-9-a and A-9-b of this Manual, respectively.

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0903 NONFEDERAL AUTHORITY TO PERFORM NOTARIAL ACTS

a. Nonfederal authority. Separate from, but related to, the Federal authority to perform notarial acts (see 0902a), the laws of most States, U.S. possessions, territories, and commonwealths authorize certain U.S. Armed Forces members to perform for U.S. Armed Forces members, their dependents, and accompanying civilians one or more of the following notarial acts:

(1) Administer oaths;

(2) Take affidavits;

(3) Take sworn statements;

(4) Take depositions; and

(5) Take acknowledgements.

b. Exercise of non-federal authority. Occasionally, a situation may arise in which the exercise of State, vice Federal, notarial authority may be warranted. Before exercising such authority, the notary official should determine:

(1) The State or States where the instrument is to be used;

(2) Who has authority to perform the particular notarial act under the laws of the jurisdiction(s) involved, see section 0910; and

(3) For whom the particular notarial function may be performed under the laws of the jurisdiction(s) involved, see section 0910.

c. Legal effectiveness. When exercising State authority, the statutory requirements of the jurisdiction(s) in which the instrument is to be used determine the legal effectiveness of the notarial acts performed. When a single instrument requiring acknowledgment is to be used in more than one jurisdiction, the acknowledgment must comply with the laws of every jurisdiction in which it is to be used.

d. Civil notaries. Although both Federal and State law authorize a variety of Federal officials to perform notarial acts, it is permissible in the U.S. to use locally appointed notaries public, or when abroad, a U.S. consul.

PART B - GENERAL INSTRUCTIONS FOR THE PERFORMANCE OF NOTARIAL ACTS

0904 INTRODUCTION

This part provides general guidance on performing notarial acts. When in doubt, specific guidance should be obtained from a judge advocate.

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0905 GENERAL RESPONSIBILITIES OF A NOTARY

a. Notaries may not engage in the practice of law and, accordingly, may not draw up legal documents, such as wills, contracts, mortgages, and deeds.

b. Notaries may not sign their names to blank instruments. Nor may they certify the authenticity of public, registered, or court records or documents, or issue certified copies of such documents or records. They may not take an affidavit or an acknowledgment unless the person who signed the instrument is actually in their presence. Notaries must administer oaths, if an oath is authorized or required, in person. Notaries may not falsely execute certificates, such as predating or postdating the document. The notarial authority may not be delegated to another person.

c. Notaries may be subject to civil and criminal liability, including fines and imprisonment for misconduct, negligence, malpractice, or other breach of official duties.

0906 GENERAL INSTRUCTIONS FOR NOTARIAL ACTS

a. Acknowledgments. An acknowledgment is a formal declaration or admission before a properly authorized official, by a person who has executed an instrument, that such instrument is his act or deed. It includes the certificate or written evidence of the act of acknowledgment made by the officer, as well as the act itself. Acknowledgments relate primarily to written instruments affecting land and granting or creating legal rights. Statutes may require that deeds, mortgages, leases (particularly those over a certain length of years), or powers of attorney be acknowledged.

(1) The acknowledgment must be made in the presence of the notary, who must identify both the person and the person's eligibility. Notaries must decline to take the acknowledgment if identification is impossible or if the person is not eligible under the proper authorizing statute. Notaries may not take their own acknowledgments nor may they acknowledge a document under which they are an appointee or beneficiary. Notaries should ensure the correct dates are properly inserted for any certificate verified or acknowledged before them. Changes, cross outs, and erasures in the body of the acknowledgment should be avoided. If unavoidable, they should be initialed by the notary wherever they appear.

(2) If a signature has been affixed outside the notary's presence, the signer must verify, affirm, and acknowledge the signature on the acknowledgment or affidavit. The notary should compare the signature affixed with a signature made in the notary's presence and on the signer's identification.

(3) The notary officer should sign his name and print or stamp the authorizing title. See Sections 0902d and 0903a and Appendix A-9-a. The notary must have authority in the venue or the place the affidavit is administered. The venue is the name of the State and the county, or other territorial subdivision to which jurisdiction is limited.

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b. Sworn instruments. A sworn instrument is a written declaration signed by a person who declares under oath before a properly authorized official that the facts set forth are true to the best of his knowledge and belief. Sworn instruments include affidavits, sworn statements, and depositions. See Appendix A-9-b of this Manual. An affidavit is a sworn statement made by a person known as the affiant or deponent. The facts in the affidavit are sworn or affirmed to be true by the affiant before the notary. See Section 0906e on taking oaths.

(1) See Section 0906a(3) for guidance on the signature block for the notary.

(2) The notary need not be concerned with the affiant's veracity. The notary is not required to independently verify the truth of the facts stated in the affidavit. The affiant may be subject to prosecution for perjury if the facts are willfully misstated. In taking verification upon oath or affirmation, the notarial officer must identify, either from personal knowledge or satisfactory evidence, that the person appearing before the officer and making the verification, is the person whose signature appears on the statement being verified.

c. Certified true copy

(1) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of the original, by carefully and personally comparing the copy and original or observing the copying process. Documents cannot be certified as true copies based upon the assertion of the requester. See also 0905b. The entity that created the document or maintains the original document or electronic record as part of its official responsibilities is the sole body capable of verifying the authenticity of a document. Therefore, military notaries and other members of the legal assistance staff may not certify documents as true and accurate copies of original documents that are neither created by the office nor maintained by the office as part of its official responsibilities.

(2) Military notaries may acknowledge the signature of the document custodian on the certification of authenticity. The document custodian must be from the office responsible for maintaining the original document or electronic record. Additionally, military notaries may create an affidavit by a client, attesting to a copy of an original official document he or she has received and maintained, if such a notarized statement suffices to meet the client's needs.

(3) Military notaries may not certify any documents that on their face, or otherwise, indicate they may not be copied (i.e. Naturalization Certificates).

d. Consul of the U.S. Overseas, the U.S. State department runs Consulate Offices and Embassies that perform tasks such as passport renewals, visa applications, and notarization or certification of documents. 10 U.S.C. § 1044a gives military notaries the general powers of "a consul of the U.S." for the limited purposes of performing the aforementioned tasks.

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e. Oaths and affirmations. Oaths and affirmations are pledges whereby affiants swear or affirm in the presence of the notary the truth of statements made by them. Oaths and affirmations are used when taking affidavits or sworn instruments. See Section 0902b and 0902c.

(1) Persons administering the oath should tell the affiant to raise his right hand and say the following: "Do you swear that the information contained in this document is the truth to the best of your knowledge so help you God?"

(2) Affirmation may be administered in the following form: "Do you solemnly, sincerely, and truly declare or affirm the information contained in this document is the truth to the best of your knowledge?"

(3) The reply should be "I do" or similar words of assent to both the oath and affirmation.

f. Seal of the person executing document. Although most jurisdictions no longer distinguish between sealed and unsealed instruments, some require certain instruments be executed under seal. When a seal is required, insert the statement "witness the following signature and seal," immediately preceding the signature of the person executing the document. In most jurisdictions, typing, printing, or writing "(SEAL)" or the symbol "(LS)" after the signature completes the sealing of the instrument. Others also require that the intention to create a sealed instrument be reflected in the body of the instrument. Only use a seal if specifically required by statute or other law. Seals should be used cautiously, since in some States instruments under seal create special legal consequences or have a unique status. Consult a judge advocate as necessary.

g. Seal of the person performing notarial act. State statutes authorize the performance of notarial acts without an impressed or raised seal. The formats in Appendix A-9-a and A-9-b of this Manual provide evidence of an officer's authority to take acknowledgments or sworn instruments.

h. Witnesses. Acknowledgment of instruments that may affect title to real property must be witnessed by three persons. See Appendix A-9-a of this Manual. The name, grade or rate, branch of service, and duty station or permanent home address of each witness should be typed or printed below the signature of the witness. Acknowledgments affecting title to real property may, in some States (e.g., California), require the notary to record the thumbprint of the grantor in the notary logbook. State law should be consulted to ascertain whether a thumbprint of the grantor is required in the notary log along with the signature of the grantor.

i. By whom acknowledgments or sworn instruments may be taken. The majority of State statutes authorize any commissioned officer with the grade of ensign (or second lieutenant) or higher to take acknowledgments and sworn instruments. Section 0910 indicates States that require the commissioned officer have a higher grade, or permit commissioned, noncommissioned, or petty officers of a lower grade or rate, to perform these acts, or where they restrict the authority of officers to perform certain functions.

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j. When, where, and for whom acknowledgments and sworn instruments may be taken. The alphabetical listing of States in section 0910 should be consulted to determine when, where, and for whom acknowledgments and sworn instruments may be taken.

k. Identifying the person requesting the notarial act. In witnessing or attesting a signature, the notarial officer must determine that the person appearing before the officer is the person named in the document to be signed. A notarial officer has satisfactory evidence of the identity of the person whose signature is on a document and that the person is within the class of persons for whom the notarial act may be performed, if that person is: (1) personally known to the notarial officer; (2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or (3) identified by identification documents.

0907 NOTARY LOGS

Notaries must be able to confirm specific notary acts they performed many years after the act. A notary log, therefore, shall be maintained and kept indefinitely by each notary, even after release from active duty. The log should include signer's name and signature, document, date, and location. These personal logs may not be made part of any Navy system of records and are not to be passed to other Navy personnel. State notaries are required to maintain their notary logs in compliance with the rules and regulations of the State under which they have notarial authority.

PART C -- COMPILATION OF NONFEDERAL NOTARIAL PROCEDURES AND LAWS

0908 INTRODUCTION

Part C provides general guidance for notarial acts and specific statutory requirements in each State, U.S. possessions, territories, and commonwealths. U.S. Armed Forces members should use the formats in Appendix A-9-a and A-9-b of this Manual for effective execution. When available, consult a judge advocate. Any instruction from a civilian attorney who prepares and forwards an instrument for execution should be followed carefully.

0909 UNIFORM ACKNOWLEDGMENT ACT, UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT, AND UNIFORM LAW ON NOTARIAL ACTS

Several States have enacted the Uniform Acknowledgment Act or its successors, the Uniform Recognition of Acknowledgments Act and its successor, the Uniform Law on Notarial Acts. In many instances, these Acts have not been accompanied by repeal or revision of existing statutory laws on the power to perform notarial acts, resulting in overlapping or conflicting authorization. The alphabetical listing of States in section 0910 references those jurisdictions which have enacted the Acts, specifies additional statutes in those jurisdictions granting similar powers, and summarizes each jurisdiction's authorization to perform notarial acts. In

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jurisdictions with conflicting authorization, the most restrictive view is provided to assure the instrument's effectiveness. Any notarial official having questions about any of these statutes should consult a judge advocate before performing a notarial act.

0910 SPECIAL INSTRUCTIONS FOR SWORN INSTRUMENTS - SUMMARY OF STATE LAWS

This section is an alphabetical summary of requirements to take acknowledgments, administer oaths, and prepare sworn instruments pursuant to authority granted to specified military officials under the laws of each State, the District of Columbia, and U.S. possessions, territories, and commonwealths. Unless otherwise indicated, "commissioned officer" as used in this section includes commissioned warrant officers. Unless otherwise indicated, "U.S. Armed Forces members" does not include spouses, dependents of such members, or civilians employed by the Armed Forces. The limitations are not applicable to the exercise of Federal notarial authority under 10 U.S.C. § 1044a or to the administration of oaths pursuant to 10 U.S.C. § 936 (Article 136, UCMJ).

a. ALABAMA. Ala. Code § 35-4-26 (2004); § 35-4-29 (2005).

(1) Acknowledgments. Any commissioned officer in the U.S. Armed Forces may take acknowledgements of any person, outside the State.

(2) Oaths and sworn instruments. Same as for acknowledgements.

(3) Seal. Not required. Use format in A-9-a or A-9-b. Forms for property conveyance documents are found in § 35-4-29.

b. ALASKA. Alaska Stat. §§ 34.15.160, 34.15.180 (2006); enacted Uniform Recognition of Acknowledgments Act as Alaska Stat. §§ 09.63.010 to 130 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the Armed Forces to perform notarial acts may take acknowledgments, at any place, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

c. ARIZONA. Enacted Uniform Recognition of Acknowledgments Act as Ariz. Rev. Stat. Ann. §§ 33-501 to 508 (2005) and Uniform Acknowledgments Act as Ariz. Rev. Stat. Ann. §§ 33-511 to 513 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S.

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Armed Forces members; and (c) others serving with or accompanying the Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

d. ARKANSAS. Enacted Uniform Acknowledgments Act as Ark. Code Ann. §§ 16-47-201 to 218 (2006); Ark. Code. Ann. § 16-2-104 (2004); Ark. Code Ann. § 16-47-109 (validating all acknowledgments of Armed Forces members taken prior to March 20, 1945).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of persons serving in or with the U.S. Armed Forces and their dependents.

(2) Oaths and sworn instruments. Any person in the U.S. Armed Forces may make an oath to any affidavit before any commissioned officer.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

e. CALIFORNIA. Cal. Civ. Code Ann. § 1183.5 (2006).

(1) Acknowledgments. Any officer on active duty in the U.S. Armed Forces with the general powers of a notary public under section 0902 may take acknowledgments, at any place, for any person serving in the U.S. Armed Forces, or such person's spouse, and for any person serving with, employed by, or accompanying such U.S. Armed Forces outside the U.S., the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

f. COLORADO. Colo. Rev. Stat. Ann. § 24-12-104 (2006); enacted Uniform Recognition of Acknowledgments Act as Colo. Rev. Stat. Ann. §§ 12-55-201 to 211 (2005).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

g. CONNECTICUT. Conn. Gen. Stat. Ann. §§ 1-24, 27-137 (2006); enacted Uniform Acknowledgment Act as Conn. Gen. Stat. Ann. §§ 1-28 to 41 (2004) and Uniform Recognition of Acknowledgments Act as Conn. Gen. Stat. Ann. §§ 1-57 to 65 (2004).

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(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces. Any commissioned officer, excluding warrant officers, on active duty in the Armed Forces may take acknowledgments, inside the State, of Armed Forces members or their dependents.

(2) Oaths and sworn instruments. U.S. Armed Forces judge advocates, law specialists in the Coast Guard, adjutants, assistant adjutants, acting adjutants, personnel adjutants, commanding officers, executive officers, and those officers whose rank is lieutenant commander or major or higher may take oaths, at any place, of persons serving in or with the U.S. Armed Forces and their spouses. In addition, any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take oaths, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen, (b) U.S. Armed Forces members, and (c) others serving with or accompanying the U.S. Armed Forces.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

h. DELAWARE. Del. Code Ann. tit. 25, § 130 (2006); enacted Uniform Law on Notarial Acts as Del. Code Ann. tit. 29, §§ 4321-4328 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of: (a) U.S. Armed Forces members at any place, (b) merchant seamen outside the limits of the 48 contiguous States and the District of Columbia, and (c) others outside said limits by permission, assignment, or direction of any department or official of the U.S. Government, in connection with any activity pertaining to any war in which the U.S. is then engaged. In addition, any such officer may take acknowledgments of any person, at any place, pursuant to section 0902.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

i. DISTRICT OF COLUMBIA. No local statutory authority for any U.S. Armed Forces member to take acknowledgments, oaths, or sworn instruments. See section 0902 for Federal authority to perform these functions.

j. FLORIDA. Fla. Stat. Ann. §§ 92.51, 695.031 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of U.S. Armed Forces members, their spouses, and persons whose duties require their presence with the U.S. Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

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(3) Seal. Not required. Use format in A-9-a or A-9-b.

k. GEORGIA. Ga. Code Ann. §§ 45-17-30 to 34 (2006).

(1) Acknowledgments. Any commissioned officer may take acknowledgments of any person, at any place, for Georgia property only. In addition, any commissioned officer on active duty in the U.S. Armed Forces may take acknowledgments of the following persons and their spouses, dependent children, and other dependents: (a) U.S. Armed Forces members at any place, (b) merchant seamen outside the limits of the U.S., and (c) others outside said limits by permission, assignment, or direction of any department or official of the U.S. Government, in connection with any activity pertaining to the prosecution of any war in which the U.S. is then engaged.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

l. GUAM. Guam Code Annotated, Title 5 (Government Operations) § 33701 (2006); enacted Uniform Recognition of Acknowledgments Act as Guam. Code Annotated, Title 21 (Real Property) §§ 35101-35109 (2006).

(1) Acknowledgments. Any commissioned officer of the Armed Forces of the U.S., while on active duty, who is authorized to administer oaths by the Uniform Code of Military Justice, may administer oaths and affirmations, take depositions, affidavits and acknowledgements of deeds, grants, transfers and other instruments of writing, and powers of attorney, of any person who for the time being is on active duty with the Armed Forces of the U.S., in the same manner as a Notary Public. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside Guam, for the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

m. HAWAII. Haw. Rev. Stat. § 502-47 (Michie 2006).

(1) Acknowledgments. Any officer in the U.S. Armed Forces authorized in section 0902 may take acknowledgments of any person in the U.S. Armed Forces at any place, including any person outside the U.S.

(2) Oaths and sworn instruments. There is no provision for officers to take oaths or sworn instruments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

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n. IDAHO. Idaho Code §§ 55-705, 55-713 (2006).

(1) Acknowledgments. Any officer in the U.S. Armed Forces designated to take a deposition may take the acknowledgment, at any place, of persons in the U.S. Armed Forces or otherwise subject to military law, their wives, and dependents.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

o. ILLINOIS. 765 ILCS 5/20 (2006); enacted Uniform Recognition of Acknowledgments Act as 765 ILCS 30/1-30/10 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, at any place, of the following and persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces.

(2) Oaths and sworn statements. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

p. INDIANA. Ind. Code Ann. §§ 32-21-9-1 to 4 (Burns 2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of: (a) those serving in or with the U.S. Armed Forces at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) others outside said limits by permission, assignment, or direction of any department or office of the U.S. Government, for any activity pertaining to the prosecution of any war in which the U.S. is then engaged. Dependents are not included.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

q. IOWA. Iowa Code Ann. §§ 9E.1 - 9E.17 (2005); Iowa R. Civ. P. 1.713 (2005).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of those serving in or with the U.S. Armed Forces.

(2) Oaths and sworn instruments. Depositions may be taken by any commissioned officer under whose command the person giving the deposition is serving, or by any commissioned officer of the Judge Advocate General's Corps.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

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r. KANSAS. Enacted Uniform Law on Notarial Acts as Kan. Stat. Ann. §§ 53-501 to 511 (2006). Uniform Recognition of Acknowledgments Act repealed in 1984.

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

s. KENTUCKY. Ky. Rev. Stat. Ann. § 384.080 (2006); enacted Uniform Recognition of Acknowledgments Act as Ky. Rev. Stat. Ann. §§ 423.110 to .190 (2004).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, of the following persons and their dependents: (a) U.S. merchant seamen outside the limits of the U.S.; (b) U.S. Armed Forces members outside the State; and (c) others outside said limits by permission, assignment, or direction of any department or official of the U.S. Government. Acknowledgments may be taken within the state for members of the U.S. Armed Forces, but not their dependents.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

t. LOUISIANA. La. Rev. Stat. Ann. § 35:7 (2006); La. Rev. Stat. Ann. §§ 35:511 to 513 (2006).

(1) Acknowledgments. Any person designated in 10 U.S.C. § 1044a may take acknowledgments for people designated in 10 U.S.C. § 1044a.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

u. MAINE. Me. Rev. Stat. Ann. tit. 33 § 203 (2005); enacted Uniform Recognition of Acknowledgments Act as Me. Rev. Stat. Ann. tit. 4 §§ 1011-1019 (2004).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgements, outside of the state, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces. Any commissioned officer, excluding warrant officers, may take acknowledgments of U.S. Armed Forces members, at any place.

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(2) Oaths and sworn statements. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

v. MARYLAND. Md. Ann. Code , State Government Article, §§ 19-201 to 205 (2006); enacted Uniform Acknowledgments Act as Md. Ann. Code , State Government Article, §§ 19-101 to 114 (2003).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of: (a) U.S. Armed Forces members, and their spouses and dependents, at any place; (b) merchant seamen outside the U.S.; and (c) others outside said limits by permission, assignment, or direction of any department or official of the U.S. Government, in connection with any activity pertaining to the prosecution of any war in which the U.S. is then engaged.

(2) Oaths and sworn instruments. Same as for acknowledgments, except there is no provision for officers to take oaths or sworn statements of spouses or dependents.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

w. MASSACHUSETTS. Mass. Ann. Laws ch. 222, § 11 (2006); Mass. Ann. Laws. Spec. L. 35:16, 35:18 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of persons serving in or with the U.S. Armed Forces and their dependents. Acknowledgements of U.S. Armed Forces members or their dependents must include the member's Social Security number.

(2) Oaths and sworn instruments. Same as for acknowledgments, except there is no provision for officers to take oaths or sworn instruments of dependents. Sworn instruments are limited to affidavits and depositions.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

x. MICHIGAN. Mich. Compiled Laws § 600.1440 (2006); enacted Uniform Recognition of Acknowledgments Act as Mich. Compiled Laws §§ 565.261-270 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. Armed Forces members; (b) civilian employees of the U.S. Armed Forces; and (c) U.S. merchant seamen.

(2) Oaths and sworn instruments. Any commissioned officer on active duty in the U.S. Armed Forces may administer oaths or affidavits, at any place, for the following persons and their dependents: (a) persons serving in or with the U.S. Armed Forces, and (b) civilian employees of the U.S. Armed Forces.

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(3) Seal. Not required. Use format in A-9-a or A-9-b.

y. MINNESOTA. Enacted Uniform Law on Notarial Acts as Minn. Stat. Ann. §§ 358.41 to .50 (2005).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

z. MISSISSIPPI. Miss. Code Ann. §§ 25-33-23, 89-3-5 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of: (a) U.S. Armed Forces members and their spouses at any place; (b) merchant seamen outside the limits of the U.S. included within the 48 contiguous States and the District of Columbia; and (c) others outside such limits by permission, assignment, or direction of any department or official of the U.S. Government, in connection with any activity pertaining to the prosecution of any war in which the U.S. is then engaged.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

aa. MISSOURI. § 442.160 R.S. Mo. (2006); § 492.070 R.S. Mo. (2006).

(1) Acknowledgments. Any commissioned officer in the U.S. Armed Forces, excluding warrant officers, whether or not on active duty, may take acknowledgments for U.S. Armed Forces members, whether or not on active duty, and their spouses when joint or separate acknowledgment to the same instrument is required.

(2) Oaths and sworn instruments. Same as for acknowledgments, except there is no provision for officers to take oaths or sworn statements of spouses.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

bb. MONTANA. Enacted the Uniform Law on Notarial Acts as Mont. Code Ann. §§ 1-5-601 to 611 (2005).

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

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cc. NEBRASKA. Enacted Uniform Recognition of Acknowledgments Act as Neb. Rev. Stat. §§ 64-201 to 210 (2006); Neb. Rev. Stat. § 76-227 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces. (Note: Section 76-227 is ambiguous as to location.)

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

dd. NEVADA. Enacted the Uniform Law on Notarial Acts as Nev. Rev. Stat. Ann. §§ 240.161 to .169 (2006).

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

ee. NEW HAMPSHIRE. Enacted Uniform Acknowledgments Act as N.H. Rev. Stat. Ann. §§ 456:1 to 15 (2006) and Uniform Recognition of Acknowledgments Act as N.H. Rev. Stat. §§ 456-A:1 to 9 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces, may take the acknowledgment of any person serving with or in the U.S. Armed Forces or their dependents wherever located. Any commissioned officer, on active duty in the U.S. Armed Forces, and others authorized by regulation of the Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seaman; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments, only outside the State.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

ff. NEW JERSEY. N.J. Stat. Ann. § 38:23A-1 (2006).

(1) Acknowledgments. Any commissioned officer in the U.S. Armed Forces may take acknowledgments of: (a) U.S. Armed Forces members and their spouses at any place; (b) merchant seamen outside the limits of the 48 contiguous States and the District of Columbia; and (c) others outside said limits by permission, assignment, or direction of any department or official of the U.S. Government, in connection with any activity pertaining to the

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prosecution of any war in which the U.S. Government is then engaged, or in time of emergency.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

gg. NEW MEXICO. Enacted the Uniform Law on Notarial Acts in 1993 as N.M. Stat. Ann. §§ 14-14-1 to 11 (2006).

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

hh. NEW YORK. N.Y. Civ. Prac. L. & R. § 2309 (2006); N.Y. Real Prop. Law §§ 300, 312 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, for conveyances of real property located in this State, at any place, of persons serving in or with the U.S. Armed Forces, their dependents, and any person attached to or accompanying the U.S. Armed Forces. Acknowledgments of U.S. Armed Forces members or their dependents must include the commissioned officer's "serial" number and the member's "serial" number.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

ii. NORTH CAROLINA. N.C. Gen. Stat. § 47-2 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of any person serving in or accompanying the U.S. Armed Forces, or their spouse.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. U se format in A-9-a or A-9-b.

jj. NORTH DAKOTA. Enacted Uniform Recognition of Acknowledgments Act as N.D. Cent. Code Ann. §§ 47-19-14.1, 14.2 (2006).

(1) Acknowledgments. Any commissioned or noncommissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, at any place, of the following persons and their dependents: (a) U.S. merchant seamen, (b) U.S. Armed Forces members, and (c) persons serving with or accompanying the U.S. Armed Forces. The inclusion of the officer's title or rank and "serial" number is sufficient proof of authority.

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(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

kk. OHIO. Enacted Uniform Recognition of Acknowledgments Act as Ohio Rev. Code Ann. §§ 147.51 to .58 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with, employed by, or accompanying the U.S. Armed Forces outside the U.S.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

ll. OKLAHOMA. Okla. Stat. Ann. tit. 72, §§ 50.1 - 50.3 (2005); enacted Uniform Law on Notarial Acts as Okla. Stat. Ann. tit. 49, §§ 111-121 (2005).

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place. In addition, any person of the rank of sergeant, petty officer, or higher may take acknowledgements of U.S. Armed Forces members, and of their spouses if joint or separate acknowledgment is required, for deeds conveying real estate within the State, powers of attorney, or any other instruments requiring acknowledgment or the taking of an oath, or for any other purpose.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

mm. OREGON. Enacted Uniform Law on Notarial Acts as Or. Rev. Stat. §§ 194.505 to .595 (2006).

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

nn. PENNSYLVANIA. Enacted Uniform Acknowledgment Act as 21 P.S. §§ 291.1 - 291.13 (2005); 57 P.S. § 54d (2005).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of: (a) U.S. Armed Forces members and their spouses at any place; (b)

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merchant seamen outside the limits of the 48 contiguous States and the District of Columbia; and (c) others outside said limits by permission, assignment, or direction of any department or official of the U.S. Government in connection with any activity pertaining to the prosecution of any war in which the U.S. is then engaged. Additionally, any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of "dependents" of persons serving with or in the U.S. Armed Forces, wherever located.

(2) Oaths and sworn instruments. Same as for acknowledgments, except that no provision is made for administering oaths to "dependents" of persons serving with or in the U.S. Armed Forces.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

oo. PUERTO RICO. P.R. Laws Ann. tit. 25, §§ 2803, 2901-2907 (2005). Judge Advocates are authorized to attest and authenticate military powers of attorney and wills executed by servicepersons in their presence, subject to the registration and certification provisions of § 2903 of Title 25. No other local statutory authority for any U.S. Armed Forces member to take acknowledgments, oaths, or sworn instruments. See Section 0902 for Federal authority to perform these functions. 25 L.P.R.A. § 2803 authorizes oath administration for military administration.

pp. RHODE ISLAND. R.I. Gen. Laws §§ 34-12-5 to 8 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of any person outside the limits of the U.S. and of U.S. Armed Forces members and their dependents.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

qq. SOUTH CAROLINA. Enacted Uniform Recognition of Acknowledgments Act as S.C. Code Ann. §§ 26-3-10 to 90 (2005).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the Armed Forces to perform notarial acts may take acknowledgements, at any place, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

rr. SOUTH DAKOTA. S.D. Codified Laws Ann. §§ 18-4-6 to 9, 18-3-2 to 4 (2006); enacted Uniform Acknowledgment Act as S.D. Codified Laws §§ 18-5-1 to 18 (2006).

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(1) Acknowledgments. Any commissioned officer, excluding warrant officers, in the U.S. Armed Forces may take acknowledgments, at any place, of any person serving in or with the U.S. Armed Forces.

(2) Oaths and sworn instruments. Any commissioned officer in the U.S. Armed Forces may take oaths and sworn instruments of: (a) U.S. Armed Forces members, including the Coast Guard; (b) civilians serving with, employed by, or accompanying the U.S. Armed Forces outside the U.S.; and (c) officers of the Public Health Service detailed for duty with the U.S. Armed Forces.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

ss. TENNESSEE. Tenn. Code Ann. §§ 58-1-605 to 607 (2005).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of U.S. Armed Forces members on active duty, and their spouses if they are accompanying the members.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

tt. TEXAS. Tex. Gov't Code § 602.005 (2006); Tex. Civ. Prac. & Rem. Code Ann. §§ 121.001(d), 121.007 (2005).

(1) Acknowledgments. Any commissioned officer in the U.S. Armed Forces may take acknowledgments, at any place, of U.S. Armed Forces members, and their spouses.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

tt. UTAH. Enacted the Recognition of Acknowledgments Act in 1988 as Utah Code Ann. §§ 57-2a-1 to 7 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, at any place, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

uu. VERMONT. 12 V.S.A. § 5855 (2006).

(1) Acknowledgments. Any commissioned officer with the rank of lieutenant or higher in the Navy, or with equivalent rank in the Marine Corps, may take acknowledgments, at any place, of any person.

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(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

vv. VIRGIN ISLANDS. 5 V.I.C. § 694 (2006); Enacted the Uniform Acknowledgment Act at. 28 V.I.C. §§ 81-93 (2004).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the Virgin Islands, for the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces. Additionally, any commissioned officer on active duty in the U.S. Armed Forces, except for warrant officers, may take the acknowledgment of any person serving in or with the U.S. Armed Forces, at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments, except that oaths may not be taken of service members within the Virgin Islands.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

ww. VIRGINIA. Va. Code Ann. §§ 55-114.1, 55-115 (2006); enacted Uniform Recognition of Acknowledgments Act as Va. Code Ann. § 55-118.1 to 118.9 (2004).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the Commonwealth, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; (c) others serving with or accompanying the U.S. Armed Forces. Additionally, any commissioned officer may take the acknowledgment of a person on active duty with the U.S. Armed Forces or their spouse at any place. A person authorized per 10 U.S.C. § 936(a) to take acknowledgments may certify acknowledgments by persons who: (a) are in the U.S. Armed Force at any place; (b) is employed by, or accompanying such armed forces outside the U.S. and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands; or (c) is subject to the Uniform Code of Military Justice of the U.S. outside of the U.S.

(2) Oaths and sworn instruments. Same as for acknowledgments outside the Commonwealth of Virginia.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

xx. WASHINGTON. Rev. Code Wash. § 73.20.010 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments of: (a) U.S. Armed Forces members; (b) merchant seamen serving outside the limits of the 48 contiguous States and the District of Columbia; and (c) others outside said limits by permission, assignment, or direction of any

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department or official of the U.S. Government, in connection with any activity pertaining to the prosecution of any war in which the U.S. is then engaged.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

yy. WEST VIRGINIA. W. Va. Code § 39-1-4a (2006); W. Va. Code § 57-5-9 (2006); enacted Uniform Recognition of Acknowledgments Act as W. Va. Code §§ 39-1A-1 to 9 (2006).

(1) Acknowledgments. Any commissioned officer on active duty in the U.S. Armed Forces and others authorized by regulation of the U.S. Armed Forces to perform notarial acts may take acknowledgments, outside the State, of the following persons and their dependents: (a) U.S. merchant seamen; (b) U.S. Armed Forces members; and (c) others serving with or accompanying the U.S. Armed Forces. Any commissioned officer may take the acknowledgment of a person in the U.S. Armed Forces at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments outside the State.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

zz. WISCONSIN. Wis. Stat. Ann. § 887.01 (2006); enacted Uniform Law on Notarial Acts as Wis. Stat. Ann. § 706.07 (2006).

(1) Acknowledgments. Any commissioned officer on active duty with the U.S. Armed Forces and any person authorized pursuant to Section 0902 (10 U.S.C. § 1044a) may take acknowledgments of any person pursuant to Section 0902 at any place.

(2) Oaths and sworn instruments. Same as for acknowledgments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

aaa. WYOMING. Wyo. Stat. § 19-11-202 (2006).

(1) Acknowledgments. Any commissioned officer, excluding warrant officers, on active duty in the U.S. Armed Forces may take acknowledgments, at any place, of persons serving in or with the U.S. Armed Forces, and their dependents.

(2) Oaths and sworn instruments. There is no provision for officers to take oaths or sworn instruments.

(3) Seal. Not required. Use format in A-9-a or A-9-b.

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FORMAT FOR SIGNATURE BLOCK, WITNESSES, AND ACKNOWLEDGMENT CERTIFICATE

[Signature]
WITNESS the following signature [and seal (if required for a non-federal instrument by state law)] this_____day of_____, 20___.

(Signature of person [and "SEAL" or "LS" (if required for a non-federal instrument by state law)]

[Witness*]
Signed and delivered in the presence of:

(signature of witness)
(name of witness)
(rank/rate and branch of service)
(duty station or permanent home address)

(signature of witness)
(name of witness)
(rank/rate and branch of service)
(duty station or permanent home address)

(signature of witness)
(name of witness)
(rank/rate and branch of service)
(duty station or permanent home address)

[Venue]
With the U.S. Armed Forces
At (location**)

[Acknowledgement]
I, _____, the undersigned officer, do hereby certify that on this __day of_____, 20___, before me, personally appeared (name of person whose signature is being acknowledged), (Social Security Number if required), (status***), and presented a government issued identification card, and then did execute the foregoing instrument as a true, free, and voluntary act and deed. I do further certify that I am at the date of this certificate qualified pursuant to the authorizing statute to act in this capacity, that this certificate is executed by me in that capacity, (and by statute no seal is required).

(signature of officer)
(name of officer)
(grade, branch of service)
Notary and Consul of the U.S. (optional)
(command or organization - optional)
Commission expires: (EAOS for enlisted, "Indefinite" for officers and civilians - optional)
Authority: (authority****) (optional)
No Seal Required (optional)

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* If signature before witnesses is required for the document, insert the identifying information for each witness here.

** Insert country, State, and county in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U.S. outside the continental U.S."

*** "A U.S. Armed Forces member on active duty," "the spouse/dependent of a U.S. Armed Forces member," "a person serving with the U.S. Armed Forces," or other appropriate description of status.

**** Indicates one or more of the following as appropriate: "10 U.S.C. § 1044a and JAGMAN § 0902" (for general Federal authority to notarize documents); "10 U.S.C. § 936 (Article 136, UCMJ), and JAGMAN § 0902" (for Federal authority to administer oaths for purposes of military administration, including military justice); or "_____" (indicate State statutory authority from JAGMAN § 0910).

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SUGGESTED FORMAT FOR A SWORN OR AFFIRMED INSTRUMENT

[Venue]
With the U.S. Armed Forces
At (location*)

I, (name of person executing the sworn instrument), do solemnly swear (affirm) that . . . (This part of the instrument contains the substance of the affidavit, deposition, or other sworn statement.)

(Signature of person executing the sworn instrument)

[Jurat]
I, _____, the undersigned officer, do hereby certify that the foregoing instrument was subscribed and sworn to (affirmed) before me this___day of_____, 20___, by (name of person making statement), (Social Security Number if required), whose permanent home address is_____, and who is known to me to be (status**). And I do further certify that I am at the date of this certificate qualified pursuant to the authorizing statute to act in this capacity, that this certificate is executed by me in that capacity, and by statute no seal is required.

(signature of officer
(name of officer)
(rank/rate and branch of service)
Notary and Consul of the U.S. (optional)
(command or organization - optional)

Commission expires: (EAOS for enlisted, "Indefinite" for officers and civilians - optional)
Authority: (authority***) (optional)
No Seal Required (optional)

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*Insert Country, State, and County in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U.S. outside of the continental U.S."

** "A U.S. Armed Forces member on active duty," "the spouse/dependent of a U.S. Armed Forces member," "a person serving with the U.S. Armed Forces," or other appropriate description of status.

*** Indicate one or more of the following as appropriate: "10 U.S.C. § 1044a and JAGMAN § 0902" (for general Federal authority to notarize documents); "10 U.S.C. § 936 (Article 136, UCMJ), and JAGMAN § 0902" (for Federal authority to administer oaths for purposes of military administration, including Military justice); or "_____" (indicate State statutory authority from JAGMAN § 0910).

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CHAPTER X

INTERNATIONAL LAW

1001 SCOPE

The purpose of this chapter is to highlight major international law issues likely to arise in the context of military operations overseas. This chapter does not reprint detailed material readily available elsewhere. It guides the reader to those sources where necessary.

1002 NAVAL OPERATIONS OVERSEAS

a. General. The Commander's Handbook on the Law of Naval Operations, NWP 1-14M/MCWP 5-12.1, sets out the fundamental principles of law governing operations by the U.S. Naval Service. It is geared to the operator in a clear, concise format. It provides an overview of the law of the sea, including jurisdiction of nations over various parts of the world's oceans, legal status and navigational rights of warships, other government vessels, and military aircraft, protection of persons and property at sea, and the law of naval warfare.

b. Areas of frequent inquiry

(1) Presence of nuclear weapons. It is general U.S. policy not to deploy nuclear weapons aboard surface ships, attack submarines, and Naval aircraft. However, under the U.S. Government neither confirm nor deny (NCND) policy, members of the Department of the Navy (DON) and its civilian employees shall not discuss the presence or absence of nuclear weapons at any general or specific location, including aboard any U.S. military station, ship, submarine, vehicle, or aircraft. Detailed instructions on the proper response to inquiries for information or assurances with respect to the presence or absence of nuclear weapons or components can be found in OPNAVINST 5721.1 (series). The DON's nuclear weapons classification system is established in OPNAVINST S5513.9 (series). Information concerning the capability of a unit to deliver, handle, or maintain nuclear weapons is unclassified. Information concerning the actual presence or absence of nuclear weapons in relation to a specific location is classified.

(2) Search of vessel by foreign authorities. Commanders and masters will not permit foreign authorities to search any portion of a U.S. Navy ship. See U.S. Navy Regulations, 1990, Article 0828.

(3) Protection of persons and property at sea. See NWP 1-14M/MCWP 5-12.1, chapter 3.

(4) Quarantine rules in foreign ports and airports. Commanders and masters will comply with foreign quarantine regulations and may certify such compliance to foreign authorities. Commanders will not allow foreign authorities to conduct onboard inspections. See OPNAVINST 6210.2 (series).

(5) Sovereign immunity. See NWP 1-14M/MCWP 5-12.1, chapter 2.

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(6) Pollution and environmental concerns. See U.S. Navy Regulations, 1990, Article 1163, and OPNAVINST 5090.1 (series). See also section 1006, below.

(7) U.S.-USSR incidents at sea. See OPNAVINST C5711.94; NWP 1-14M/MCWP 5-12.1, section 2.8.

(8) Humanitarian and civic assistance. See 10 U.S.C. §§ 401, 2547, and 2805(a)(2), and Annual Department of Defense (DoD) Authorization and Appropriation Acts. See also DODD 3025.15, Military Assistance to Civil Authorities; DODD 3025.12, Military Assistance for Civil Disturbances; and DODD 5525.5, DoD Cooperation with Civilian Law Enforcement Officials.

1003 INTERNATIONAL AGREEMENTS

a. General. DODD 5530.3 lays out procedures for the negotiation and conclusion of international agreements. It provides for centralized control. No DoD member or civilian employee may conclude an international agreement except in accordance with this directive and Joint Chiefs of Staff (JCS)/service implementing directives.

b. International agreement defined

(1) An international agreement is any oral or written agreement with a foreign government (including agencies, instrumentalities, or political subdivisions) or with an international organization that:

(a) Is agreed to by personnel of any DoD component;

(b) Signifies the intention of its parties to be bound; and

(c) Is denominated as an international agreement or any other name connoting a similar legal consequence.

(2) The following are not considered to be international agreements:

(a) Contracts made under Federal Acquisition Regulations (FAR);

(b) Foreign Military Sales Credit Agreements;

(c) Foreign Military Sales Letters of Offer and Acceptance and Letters of Intent;

(d) NATO Standardization Agreements (STANAGS). While most STANAGS are not international agreements, some STANAGS, particularly in the logistics area, are legally binding and considered agreements;

(e) Real estate leases under 10 U.S.C. §§ 2667 and 2675 and 22 U.S.C. § 2796;

(f) Agreements solely to establish administrative procedures; and

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(g) Acquisitions or orders pursuant to cross-servicing agreements made under the authority of Acquisition and Cross-Servicing Agreements with NATO and other Allies (10 U.S.C. §§ 2341-2350).

c. Negotiation of agreements. The United States concludes international agreements in many forms. Members of the U.S. Navy and U.S. Marine Corps may conclude these agreements only when specifically authorized. For matters under the cognizance of the DON, authorization to negotiate and conclude an international agreement should be sought from the Secretary of the Navy, the Assistant Secretary of the Navy (Research, Development and Acquisition), the Chief of Naval Operations, the Chief of Naval Research, or the Commandant of the Marine Corps, as appropriate. For matters that concern operational command of joint forces, such authorization should be sought from the Chairman, Joint Chiefs of Staff. Negotiations toward the formation of any international agreement are not permitted pending receipt of such authorization. Once authorized to negotiate, the cognizant representative of the U.S. must not deviate significantly from the letter of the authorization.

(1) Request for authority to negotiate. A request for authority to negotiate an international agreement must contain:

(a) A draft text or outline of the proposed agreement, or an explanation why such a draft cannot be provided;

(b) A legal memorandum reciting the authority to carry out each obligation to be assumed by the U.S. and an explanation of other legal considerations;

(c) A fiscal memorandum specifying the estimated cost and appropriations authority or source of each obligation assumed by the DON or other DoD component; and

(d) A Technology Assessment Control Plan (see DODD 5530.3, encl (7)), which, inter alia, requires the proponent of the agreement to:

(i) itemize all sensitive U.S. classified and unclassified property and data to be transferred under the proposed agreement;

(ii) assess the risk to U.S. national security through such transfer; and

(iii) identify the foreign technologies or other benefits that the U.S. is likely to acquire through the proposed agreement.

(2) Conclusion of the agreement. Should negotiations lead to an acceptable draft, the U.S. representative must ensure that:

(a) The proposed U.S. signatory holds proper authority to conclude the agreement. This authority is obtained in the same manner as the authority to negotiate.

(b) The requirements of prior consultation with the Department of State in accordance with the Case-Zablocki Act, 1 U.S.C. § 112b, have been met for the particular agreement. The Office of the Judge Advocate General (OJAG)

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(Code 10) has historically performed this function.

(c) If a foreign language text is added, the agreement must specify either that the English text governs or that both texts are equally authentic. In the latter case, the agreement must include certification that the texts conform and have the same meaning in all substantive respects. Translators must be designated as qualified, consistent with local practice, by the official authorized to negotiate and conclude the agreement, or by an appropriate official of the State Department.

(3) Forwarding of agreement. Within 10 days of conclusion, the U.S. Navy or U.S. Marine Corps signatory must forward 5 certified copies of the agreement and a background statement to OJAG (Code 10). If an agreement is concluded pursuant to a delegation of authority from the Chairman, Joint Chiefs of Staff, the signatory must forward two certified copies of the agreement and a background statement to the General Counsel, Department of Defense, and one copy to the Office of the Secretary, Joint Chiefs of Staff. Additional copies should be forwarded to others with an interest in the subject of the agreement.

d. Additional guidance. See JCS MOPs 21 and 43, CJCSI 2300.01 (series), SECNAVINST 5710.25 (series), OPNAVINST 5710.24 (series), Case-Zablocki Act implementation (22 CFR Ch. 1, sub. S, Part 181), and DIA Regulation 60-28 concerning intelligence agreements. Questions on international agreements may be directed to OJAG (Code 10).

1004 SECURITY ASSISTANCE

a. General. Security assistance enhances U.S. national security by providing defense articles, services, training, and other assistance by grant, credit, or cash sales to friendly foreign nations. Authority for these programs is found in the Foreign Assistance Act and the Arms Export Control Act. Basic guidance is found in the Security Assistance Management Manual, DOD 5105.38-M, the DoD Foreign Military Sales Financial Manual, DODD 7290.3-M, and the Joint Security Assistance Training (JSAT) Regulation, AR 12-15/SECNAVINST 4950.4A/AFR 50-29.

b. Statutory requirements. The more important statutory requirements regarding security assistance include:

(1) Transfers of defense articles or services must be to an eligible country or designated international organization.

(2) Defense articles or services must be properly utilized by the purchaser. This means, for example, that such articles or services must be used by the purchaser's defensive forces for defensive purposes only.

(3) Withdrawal from U.S. stocks requires proper authorization.

(4) A purchasing country must pay full value, including applicable costs and surcharges.

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(5) The purchaser must agree not to transfer defense articles received from the U.S. to any third country without U.S. permission.

c. What constitutes security assistance. The DoD Dictionary of Military and Associated Terms (JCS Pub 1-02 of 12 Apr 2001) defines "security assistance" as groups of programs authorized by the Foreign Assistance Act of 1961, as amended by the Arms Export Control Act of 1976, as amended, or other related statutes by which the United States provides defense articles by grant, loan, credit, or cash sales in furtherance of national policies and objectives.

(1) There is a fine line between reimbursable security assistance and the authorized extension of limited assistance as a goodwill gesture or international courtesy in connection with combined operations. Cases are factually dependent and should, if practicable, be discussed with a Security Assistance Organization (SAO) at the local diplomatic mission or with an international lawyer with security assistance training. As a very general proposition, it is improper to extend any defense article or service (broadly defined) on a non-reimbursable basis unless there is:

(a) a specific statutory authorization for the provision of assistance; for example, 10 U.S.C. § 7227 authorizes the non-reimbursable provision of routine port and airport line services on conditions of reciprocity documented by written agreement; or

(b) the assistance is being provided to advance a clear and immediate U.S. mission interest; for example, the non-reimbursable transport of members of a foreign armed force aboard a U.S. vessel or aircraft to a remote site in connection with a combined exercise.

(2) Even if a statutory or "mutual benefit" basis can be found for extending assistance, there are country-specific limitations on the provision of assistance derived from the Foreign Assistance Act and annual authorization and appropriation acts that negate an otherwise valid legal justification for providing assistance to a foreign government.

(3) The foregoing discussion applies to the authority of U.S. forces to provide assistance to a foreign government. Similar restrictions prevent U.S. forces from accepting logistical or other support from a foreign government because of the fiscal prohibition against unauthorized augmentation of appropriations. Various statutes authorize the acceptance of certain types of assistance, such as reciprocal routine port and airport services (10 U.S.C. § 7227) and financial or in-kind host nation support (10 U.S.C. § 2608, 10 U.S.C. § 2350g); however, implementing guidance issued by DoD and the Navy should be consulted before any foreign assistance is accepted.

d. Local requests. In case of doubt, commanding officers should refer foreign requests for training, purchase, lease, or donation of equipment to the Security Assistance Officer (SAO) of the local U.S. diplomatic mission and up the chain-of-command.

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1005 POLITICAL ASYLUM AND TEMPORARY REFUGE

a. Political asylum. Political asylum is sanctuary within U.S. territorial jurisdiction or on the high seas granted to a foreign person. It affords protection from reasonable fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.

(1) No person seeking political asylum should be surrendered to foreign authorities except at the direction of the Secretary of the Navy.

(2) Since political asylum is a matter under the cognizance of the State Department, any person requesting asylum should be advised to contact the nearest U.S. Embassy or Consulate; however, no person shall be expelled from any U.S. military installation or vessel if there is an imminent threat to their safety. In such cases, persons seeking political asylum should be regarded as temporary refugees pending referral to higher authority.

b. Temporary refuge. Temporary refuge is humanitarian protection to secure the safety of a person seeking refuge against imminent danger, such as pursuit by a mob. It does not normally include persons fleeing from lawful pursuit by the law enforcement authorities of a foreign country. Temporary refuge may be granted by the senior officer present at a U.S. installation or on board a U.S. vessel. Once granted, temporary refuge will be terminated only at the direction of the Secretary of the Navy. Persons whose temporary refuge is terminated will be surrendered only to authorities designated in the message authorizing release.

c. Public announcement. No public statement concerning political asylum or temporary refuge cases should be released without authorization by the Assistant Secretary of Defense for Public Affairs. See DODD 2000.11 and SECNAVINST 5710.22 (series). In foreign territory, any such announcements should also be coordinated with the U.S. Embassy.

d. Reporting requirements. Upon receipt of a request for political asylum or temporary refuge on board a U.S. installation or vessel, the information described below should be reported via OPREP-3 PINNACLE procedures. See chapter 2, section II, of OPNAVINST 3100.6 (series) and MCO 5740.2 (series). Initial reports should not be delayed pending further developments.

(1) Name and nationality of the person requesting asylum, or temporary refuge;

(2) Date, place of birth, and occupation;

(3) Description of any documentation in his possession;

(4) List of foreign authorities who are aware of or will be notified of the request;

(5) Circumstances surrounding the request;

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(6) Exact location. If aboard a vessel or aircraft, give the estimated time of arrival at next port or airport;

(7) Reason for requesting asylum or temporary refuge;

(8) Description of any criminal charges known or alleged to be pending against the person requesting asylum. Specifically indicate if any piracy at sea, air piracy, or hijacking is involved;

(9) Any Communist Party or other political party affiliation. Also list any government office currently held or previously occupied;

(10) If applicable, whether a field office of the Immigration and Naturalization Service (INS) has been notified and if arrangements have been made to transfer the case to INS; and

(11) Any other pertinent information.

e. Custody. Any request by foreign authorities for custody of a person seeking refuge should be reported immediately to higher authority. Pending guidance from higher authority, no action should be taken other than informing the foreign authorities that the case has been referred to higher authorities for instructions.

f. References. For additional information and detailed guidance, see DODD 2000.11 and SECNAVINST 5710.22 (series). See also NWP 1-14M/MCWP 5-12.1, section 3.3.

1006 FOREIGN LITIGATION

a. Department of Justice (DOJ). DOJ has the primary responsibility for representing the U.S. in all foreign litigation. This requires timely notice to the Attorney General of legal actions arising out of overseas naval operations. The International Law Division (Code 10) of OJAG maintains close liaison with the DOJ, Office of Foreign Litigation.

b. Reports to the OJAG. Any foreign legal proceedings, including those involving non-appropriated fund activities that arise out of U.S. Naval operations overseas or are otherwise of substantial interest to the DON should be reported to OJAG (Code 10) by the most expeditious means, using message, telephone, or letter. This includes, but is not limited to, any proceeding involving the U.S. as a party and arising out of naval operations; proceedings against any person subject to military law or any DON official or employee in connection with official duties; and proceedings where attachment of U.S. funds or other property is sought. The report should include as much of the following information as possible:

(1) Names of parties to the proceeding;

(2) Nature of the action;

(3) Name of the tribunal where the proceedings have been brought;

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(4) Docket number;

(5) Names and positions of persons served, method of service, and dates;

(6) Explanation of U.S. Government's interest in the proceeding;

(7) Deadline for pleadings or other response;

(8) Nature of the principal defense, if known;

(9) Status of any named party as a U.S. Government officer, employee, agent, contractor, non-appropriated fund activity employee, etc.;

(10) Nature of relief sought;

(11) A recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the U.S. Normally, the names of such attorneys should be from a list maintained by the U.S. Embassy or Consulate; and

(12) Any other information that would provide a full understanding of the case and enable the Government to prepare a defense.

1007 STATUS OF FORCES AGREEMENTS

a. General. Status of Forces Agreements (SOFA) govern the rights, obligations, and privileges of military personnel stationed in foreign countries. The NATO SOFA is generally used as a model. Although the wording of individual SOFA's varies, they are generally uniform in subject matter. Some of the more important provisions cover entry and exit from the host country, customs, respect for local law, taxation, criminal jurisdiction, and claims. Note: Not all U.S. military personnel in country are necessarily covered by the SOFA. For example, military personnel attached to a U.S. embassy are normally afforded diplomatic status.

b. Foreign personnel in the U.S. Most SOFA's govern only U.S. personnel stationed overseas. The NATO SOFA is reciprocal in that it also covers personnel from other NATO countries stationed in the U.S. Foreign service personnel in the U.S. not protected by a SOFA are governed by applicable Federal law and regulations, State law, and working arrangements with the various States. Foreign service personnel serving in the U.S. are exempt from U.S. income tax of non-U.S. source income. They are also exempt from certain custom duties.

1008 FOREIGN CRIMINAL JURISDICTION

a. General. A sovereign nation has jurisdiction to punish offenses against its laws committed within its borders, but may waive its jurisdiction. Every SOFA includes provisions for the exercise of criminal jurisdiction. Other agreements (e.g., for personnel exchanges, professional military exchanges, and unit exchanges) may also contain criminal jurisdictional

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provisions. DoD and DON policies regarding status of forces and foreign criminal jurisdiction are set out in DODD 5525.1 and SECNAVINST 5820.4 (series).

b. Policy. It is DoD policy to maximize the exercise of U.S. jurisdiction and minimize the exercise of foreign criminal jurisdiction to the extent permissible under the applicable SOFA.

c. Exercise of jurisdiction. While international law generally recognizes the authority of the host state over all persons in its territory, the sending state also has a legitimate need to maintain good order and discipline among the members of its forces. Host states have no direct interest in many offenses, such as those committed on base or where both the victim and offender are members of the U.S. force. In order to balance the relative interests of the host and sending states, most SOFA's provide for each state to have exclusive jurisdiction over certain classes of offenses and for them to share concurrent jurisdiction over others. In case of concurrent jurisdiction, the SOFA provides for primary and secondary rights to exercise that jurisdiction, depending upon such factors as the type of offense, whether the offense arose in the performance of official duty, and whether the victim was a fellow member or dependent of the sending state's forces.

d. Waiver of jurisdiction. SOFA's generally include a procedure where one state may waive its right to exercise concurrent jurisdiction if so requested by the other state. In some agreements, this waiver has been institutionalized so that the host state essentially agrees in advance to a blanket waiver, with the right to "recall" its waiver if a specific offense is of "particular importance."

e. Custody. Whenever U.S. military personnel, members of the civilian component, or their dependents are apprehended by foreign authorities on criminal charges, every effort should be made to secure their release to U.S. custody pending final resolution of judicial proceedings.

(1) Requests by foreign authorities for delivery of custody of such personnel should be handled in strict compliance with the applicable SOFA. If there is no SOFA, U.S. personnel should not be delivered to foreign authorities pending guidance from OJAG (Code 10).

(2) Personnel in foreign custody, whether prior to or after trial, must be visited on a regular basis in accordance with SECNAVINST 1640.9 (series), DON Corrections Manual, and chapter 3 of SECNAVINST 5820.4 (series). Particular attention should be given to legal assistance, medical care, adequacy of food and clothing, health and comfort, and accountability for personal property. See MILPERSMAN 1160-050 or MCO P1900.16 (series), paragraph 1006.2i, regarding processing of personnel confined in foreign jails for administrative discharge. Such personnel will not be separated until completion of sentence and return to the U.S. See SECNAVINST 5820.4 (series), paragraph 3-8.

f. Fees. Under U.S. law, counsel fees, court costs, bail, and other expenses associated with the exercise of foreign criminal jurisdiction over military members, members of the civilian component, and their dependents, may be paid by the U.S. Government. Use of U.S. Government funds to pay fines is

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not authorized. See SECNAVINST 5820.4 (series), chapter 2.

g. Solatia. In certain countries, it is customary to offer a victim or his family a token gift of fruit, flowers, or money for injury, death, or property damage. Depending on the local culture, such token expressions of remorse can affect the resolution of criminal charges. NAVCOMP MANUAL 075146 permits the payment of solatia from operation and maintenance funds under certain circumstances, as determined by the appropriate country commander. Consult the Region Commander or the nearest Region Legal Service Office (RLSO) to determine the propriety of paying solatia from official funds in a particular country.

h. Official duty. Under every SOFA, offenses committed in the performance of official duty are subject to the primary jurisdiction of the U.S. rather than the host nation. Such cases should be handled in strict compliance with the applicable SOFA.

i. Reporting requirements. The exercise of foreign criminal jurisdiction creates a number of reporting requirements. The most important for the operational unit is the serious incident report described in section X or XI of OPNAVINST 3100.6 (series). See also MCO 5740.2 (series), SECNAVINST 5820.4 (series), chapter 4, and regulations issued by the cognizant Region Commander.

j. Military Extraterritorial Jurisdiction Act of 2000 (MEJA). MEJA has expanded the criminal jurisdiction of the U.S. to civilians accompanying U.S. forces overseas. The availability of criminal sanctions for conduct overseas may assist in obtaining waiver of host nation jurisdiction over offenses committed by civilians. See 18 U.S.C. § 3261. See also the DoD implementing instruction found at 32 C.F.R. § 153 or DODI 5525 (series).

1009 ENFORCEMENT OF U.S. LAW OVERSEAS

Routine exercise of U.S. jurisdiction over DoD personnel in countries where U.S. personnel are stationed is provided for in the status of forces provisions of agreements with the host government and the Uniform Code of Military Justice (UCMJ). Generally, assistance by DoD personnel to U.S. civilian law enforcement agencies is provided pursuant to DODD 5525.5. Outside U.S. jurisdiction, military actions conducted in direct assistance to U.S. civilian law enforcement agencies require the approval of the Secretary of Defense or the Deputy Secretary of Defense who will consider, on a case-by-case basis, requests for exceptions to the policy restrictions against direct assistance by military personnel. Such requests should be sent through the Secretary of the Navy via the JAG and OJAG (Code 10).

1010 PROPERTY CAPTURED FROM THE ENEMY DURING ARMED CONFLICT

Title to captured enemy public property passes from the government of the enemy. Under U.S. law, it becomes the property of the U.S. Government. Individuals, whether enemy or friendly, acquire only such private rights in captured enemy public property as the laws of the U.S. provide. See OPNAVINST 3460.7 (series) and MCO 5800.6 (series). See also Article 103, UCMJ, 10 U.S.C § 903.

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1011 NONCOMBATANT EVACUATION OPERATIONS (NEO)

The Secretary of State is responsible for the safe and efficient evacuation of U.S. Government personnel, their dependents, and private U.S. citizens from foreign territory when their lives are endangered by war, civil unrest, or natural disaster. The Secretaries of State and Defense are assigned lead and support responsibilities, respectively. Combatant Commanders are prepared to support Department of State to conduct NEO's. See NWP 1-14M/MCWP 5-12.1, section 3.10.3; DODD 3025.14; and FMFM 8-1, chapter 7. See also 22 U.S.C. § 4801 and 3 C.F.R. 585 (1988 compilation), sections 502 and 1301.

1012 ACCEPTANCE OF GIFTS FROM FOREIGN GOVERNMENTS

Under the Constitution and U.S. laws, military personnel and civilian employees of the DON may not accept gifts from foreign governments without the consent of the Congress. Congress has consented to the acceptance and personal retention by military personnel and civilian employees of gifts of minimal value only. Procedures for the acceptance of gifts of more than minimal value are contained in DODD 1005.13, Chapter 7 of SECNAVINST 1650.1 (series), and MCO 4001.2 (series).

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CHAPTER XI

U.S. CUSTOMS REQUIREMENTS

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CHAPTER XI

U.S. CUSTOMS REQUIREMENTS

1101 SCOPE

U.S. Customs regulations are found in title 19, United States Code, and title 19, Code of Federal Regulations. Specific information for military customs issues is contained in DODD 5030.49 and DOD 4500.9-R, part V. Customs responsibilities of vessel and aircraft commanders are also addressed in Article 0860, U.S. Navy Regulations, 1990. Customs regulations change frequently; therefore, it is important to contact the local United States Immigration and Customs Enforcement Office for current information.

1102 ENTRY REQUIREMENTS

a. General. All ships, aircraft, and other modes of transport entering the Customs territory of the U.S. from a foreign port or place will be subject to a complete customs inspection upon arrival at the first U.S. port of entry. Some exceptions may apply where an agreement exists between the U.S. Immigration and Customs Enforcement Office and the Navy for shipboard inspections and pre-clearance operations. Personnel, accompanied baggage, personal property, and cargo and the associated documentation are also subject to inspection. The vessel or aircraft commander is responsible for providing required documentation to border clearance agencies as required and will not:

(1) Interfere with the performance of duties of officials charged with customs and immigration responsibilities.

(2) Permit any cargo, baggage, or equipment to be removed from any vessel or aircraft without permission from the designated official.

(3) Allow any passenger or crewmember to depart from a vessel or aircraft prior to completion of arrangements for final border clearance processing.

b. Prohibited and restricted items. Specific guidance and the required customs forms addressing restricted and prohibited articles, agricultural products, firearms, war trophies, and implements of war can be found in part V of DOD 4500.9-R.

1103 PRE-CLEARANCE

The United States Immigration and Customs Enforcement Office may support pre-clearance for major unit redeployments. Vessel or aircraft commanders must ensure that there are adequate facilities available for pre-clearance operations and ensure that sufficient personnel are trained to assist in the clearance process. Early coordination with customs officials is important to ensure training is completed prior to departure.

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CHAPTER XII

ADMIRALTY AND MARITIME LAW

PART A -- INTRODUCTION

1201 SCOPE

a. General application. This chapter applies to admiralty tort claims, including claims against the U.S. for death, personal injury, or property damage caused by a Naval vessel or other property under the jurisdiction of the Department of the Navy (DON), or resulting from a maritime tort committed by any agent or employee of the DON, and affirmative claims by the U.S. for damage to Naval property caused by another's vessel or maritime tort. Also, this chapter briefly discusses salvage claims by or against the U.S. and claims by the Government for towage services rendered to privately owned vessels. This chapter does not apply to admiralty incidents involving only U.S. Government vessels or property. See section 1219.

b. Guidance and procedures. Part B of this chapter provides guidance to commanders on reporting and investigating admiralty incidents. Part C of this chapter discusses procedures for processing admiralty claims by judge advocates involved in admiralty claims adjudication.

c. Notice. Effective handling of admiralty claims depends on immediate notice of any admiralty incident, however trivial, to the Judge Advocate General (JAG). The Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) (Code 11) is designated as Admiralty Counsel of the Navy and is responsible for all admiralty and maritime law claims and legal/policy issues addressed in this chapter. Notifications per this chapter to Office of the Judge Advocate (OJAG) (Admiralty and Maritime Law Division) (Code 11) suffices for notification to the JAG. See sections 1203 and 1204. Prompt reporting facilitates proper investigation and resolution of admiralty matters, whether the case is settled administratively under the Secretary of the Navy's statutory claims settlement authority or results in litigation.

1202 ORGANIZATION

a. Secretary of the Navy. The Secretary of the Navy has authority for administrative settlement and direct payment of claims for personal injury or property damage caused by Naval vessels or other property under the DON's jurisdiction, or by a maritime tort committed by an agent or employee of the DON, and for towage or salvage services rendered to Naval vessels, when the amount paid does not exceed $15,000,000.00 and the matter is not in litigation. See 10 U.S.C. § 7622. The Secretary also has authority to settle affirmative admiralty claims for damage to property under the DON's jurisdiction caused by a vessel or floating object. See 10 U.S.C. § 7623.

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b. Judge Advocate General. The JAG is responsible for processing admiralty claims for adjudication by the Secretary of the Navy, or the Secretary's designee, and acts as principal liaison with Department of Justice (DOJ) for admiralty tort cases in litigation. This responsibility has been delegated to the DAJAG (Admiralty and Maritime Law), OJAG (Code 11). The contact information for OJAG (Code 11) is:

Office of the Judge Advocate General
Suite 3000, Code 11
1322 Patterson Avenue SE
Washington Navy Yard D.C. 20374-5066

Phone: 202-685-5040 (DSN 325)
FAX: 202-685-5471 (DSN 325)
Secure (STU) phone: 202-685-7040
E-Mail: admiralty@navy.mil
SIPR E-Mail: See contact page on Navy Knowledge Online (NKO)
PLAD: NAVY JAG WASHINGTON DC//11//
OJAG Duty Officer (after hours): 202-409-0417

Current Division contact information may be found on NKO in the Admiralty Community of Practice section.

c. Other organizations. Other organizations may process some admiralty claims. Contract claims arising from operation of chartered vessels, including claims for charter hire, cargo damage, general average, and redelivery repairs, are handled by Office of Counsel, Military Sealift Command (MSC). Similarly, claims for damage resulting from vessel cargo loading and unloading operations by DON-contract stevedores are under the cognizance of Office of Counsel, Naval Supply Systems Command. However, all tort claims arising from the operation of any Naval vessel, including MSC vessels, are handled by OJAG (Code 11).

PART B -- REPORTING AND INVESTIGATING ADMIRALTY INCIDENTS

1203 ADMIRALTY INCIDENTS

a. Generally. Any personal injury, loss of life, property damage, salvage, oil spill recovery/clean-up or rescue, whether occurring at sea or on land, arising in whole or in part from the operation of any DON-owned or operated ship, submarine, boat, gig, tug, barge or other vessel (including Morale, Welfare, and Recreation (MWR) vessels) upon navigable waters, or caused by ship-launched aircraft or weapons, is considered an admiralty incident. Furthermore, damage occurring ashore caused by a vessel or afloat object usually falls within admiralty jurisdiction, as does damage to certain structures located on navigable waters which traditionally are not thought of as vessels. Paragraphs (b) through (m) list common admiralty incidents which often generate admiralty claims or litigation. Whenever one of these incidents occurs, notify OJAG (Code 11) immediately by message, phone, E-Mail, or FAX. See section 1204. Similarly, if a command receives a complaint, claim, invitation to a survey, or other correspondence alleging such an

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incident (even if the receiving command believes the complaint or allegation has no basis in fact), notify OJAG (Code 11) immediately. If a command is uncertain whether a particular occurrence is an admiralty incident, contact OJAG (Code 11) for guidance.

b. Collision. A collision occurs when a moving vessel strikes another moving vessel. See sections 0247, 1208, and 1209 for special considerations when investigating a collision.

c. Allision. An allision occurs when a moving vessel or object strikes a stationary vessel, object, or structure (such as a pier, bridge, buoy, anchored or moored vessel, or a submerged object such as a wreck, coral reef, moored fishnet or trap). See sections 0247, 1208, and 1209 for special considerations when investigating an allision.

d. Personal injury or death. A death or personal injury to any person not on active duty in the Armed Forces of the U.S. occurring onboard a Naval vessel, (including small boats such as tugs, gigs, and barges) or on the brow, gangway or ladders of a Naval vessel, is an admiralty incident. Additionally, injuries occurring ashore, caused by alleged negligent actions of a Naval vessel or its crew on navigable waters, are also admiralty incidents by virtue of the Admiralty Jurisdiction Extension Act (46 U.S.C. app. § 740).

(1) Injured parties may include visitors and guests, dependents, contractor technical representatives (tech-reps), ship repairmen, stevedores and longshoremen, civilian mariners, and harbor pilots.

(2) All personal injuries or deaths must be reported to OJAG (Code 11) despite how the incident occurred, whether there is any apparent Navy responsibility for the incident, whether the injury appears minor, or whether the injured person states an intention not to file a claim against the Government. Additionally, death or personal injury occurring ashore or onboard another vessel not owned by the U.S., but arising in whole or partially incident to the operation of any Naval vessel, is also an admiralty incident and must be reported.

(3) Examples include injuries caused by objects thrown or dropped from a Naval vessel, brow injuries, individuals sickened by food served onboard a vessel or by fumes or gas emanating from a vessel, and injuries resulting from improper medical treatment or malpractice onboard a vessel. See section 1210 for special considerations in death and personal injury investigations.

e. Property damage. Any loss, damage, or destruction of property, afloat or ashore, which arises, in whole or in part, incident to the operation of a Naval vessel, or damage to Naval property caused by a privately owned vessel or floating object, is an admiralty incident. Examples include:

(1) Fishing nets, lines, lobster pots, or other gear in the water, cut or damaged by Naval vessels, including amphibious vehicles. Also, fishing gear damaged or lost by becoming fouled on DON submarine cables, underwater Naval ship or aircraft wreckage, or Naval ordnance.

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(2) Automobiles or other property located on a pier damaged by an object thrown or dropped from a Naval vessel, or by paint overspray from the vessel, or by smoke, fumes, or chemicals from the vessel.

(3) Air or water pollution damage caused by a vessel or occurring on navigable waters. This includes any release of oil, fuel or other pollutants into the water from a vessel, regardless of subsequent clean-up efforts. Further information about pollution claims can be found in section 1213.

(4) Damage or loss of a civilian contractor's property on board a Naval vessel.

(5) Significant damage to afloat Naval property, including a vessel in dry-dock, from substandard performance by a civilian contractor.

f. Swell wash/wake damage. Civilian personal injury or property damage allegedly resulting from the wake or swell created by a Naval vessel is an admiralty incident. Property damage includes damage to other vessels, shore structures, oyster beds, or clam flats. Similarly, damage to Naval property from the wake or swell from a privately owned vessel is an admiralty incident.

g. Naval maritime target ranges. Civilian personal injury or property damage allegedly resulting from maintenance or use of a Naval maritime target range is an admiralty incident.

h. Morale, Welfare, and Recreation (MWR) and special services boats and marinas. Any personal injury to non-active duty persons or damage to property owned by non-active duty persons resulting from use of MWR marinas and rental boats (including personal watercraft) is an admiralty incident and must be reported. Likewise, any damage to non-Navy owned vessels moored, anchored, or stored at MWR or special services marinas resulting from Government negligence should also be reported. This requirement is not affected by the existence of a waiver of liability or release form signed by the MWR customer as a condition for use of the property.

i. Naval aircraft and weapons. Non-active duty personal injury or property damage caused by Naval aircraft on or over navigable waters is an admiralty incident. Likewise, damage caused by sea launched Naval aircraft or weapons launched from Naval aircraft or a vessel, causing damage over land or sea is also an admiralty incident. Examples include minesweeping equipment cutting fishing gear, debris or ordnance falling from an aircraft and damaging a civilian boat or injuring passengers, or damage caused by ship and aircraft launched weapons (e.g., gunfire, missiles, bombs, etc.).

j. Salvage. Salvage of any Naval property by a civilian from navigable waters and salvage of civilian property by a Naval unit are admiralty incidents. Likewise, if any Navy vessel, equipment, or personnel are used in the towing, salvage, or rescue of non-Government vessels or property, it is also considered an admiralty incident and must be reported to OJAG (Code 11) who will forward the information to Counsel, Supervisor of Salvage, as appropriate.

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k. Vessel seizures. A Naval unit's seizure of any civilian vessel is an admiralty incident. An example is seizing a civilian boat during a drug interdiction operation.

l. Groundings. The grounding of a Naval vessel is an admiralty incident. Damage to a Naval vessel as a result of the ship's own negligence without damage to non-Government property, does not normally trigger concerns of third party claims or litigation; however, damage to underwater resources, coral reefs, or civilian property as a result of a grounding shall be reported to OJAG (Code 11). Additionally, OJAG (Code 11) can advise on liability considerations for use of commercial salvage/tow services. See chapter II in this Manual for special considerations when investigating a grounding.

m. Significant maritime incidents. Proximity of a Naval vessel to any significant maritime incident should be reported to OJAG (Code 11) because the U.S., even if not directly involved, is often joined in litigation arising from these events. Examples include witnessing the loss or damage of a civilian merchant vessel, or the rescue at sea of survivors from a sunken or disabled vessel.

1204 INITIAL REPORT OF ADMIRALTY INCIDENT

a. Means of initial report. Every admiralty incident must be reported immediately by telephone, FAX, E-Mail, or Naval message. See section 1203. This initial report is in addition to other reports required by this chapter (e.g., Admiralty Letter Report/Litigation Report), or by other authority. The initial report of an admiralty incident may be accomplished by making "NAVY JAG WASHINGTON DC//11//" an information addressee on a message required by other directives (e.g., OPREP 3, oil spill reports, etc.).

b. Initial report. The initial report of an admiralty incident should include all information and detail available at the time of the report. Normally, an initial report includes date, time, and place of incident, a brief description of the incident and any resulting injury or damage, and identification of the parties involved in the incident (Naval vessel, aircraft, or unit, civilian vessel, individual, or organization).

c. Notice. Immediate notice enables an admiralty attorney to examine the admiralty claims considerations of a particular case at an early stage. Liability may not be apparent to the Naval command considering the operational, administrative, or disciplinary features of a case. The admiralty attorney provides advice on admiralty issues and assists in preparing the investigation considering a potential claim or civil lawsuit. Also, admiralty claims and litigation practice requires action soon after the event. Common examples include: engaging the services of an independent marine surveyor for attendance at a formal joint survey of damages, see section 1206 ; developing detention data on a Naval vessel to be repaired; and ensuring segregation of repair work orders and cost data for an admiralty incident from other work, not arising from the admiralty incident, accomplished during a repair period for the convenience of the DON.

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1205 SUBSEQUENT INVESTIGATIVE REPORT

a. Generally. The initial report of an admiralty incident, discussed in section 1204, shall be supplemented as soon as practical by a written investigative report. The selection of the format for the report is ultimately within the convening authority's discretion. The convening authority shall consult with OJAG (Code 11) as soon as possible after the incident. OJAG (Code 11) will evaluate the likelihood of litigation, may consult with the DOJ, and advise the convening authority as to the most appropriate investigation format.

b. Admiralty Letter Report investigation. The Admiralty Letter Report (ALR) is a convenient reporting method that is less time-consuming than a command investigation. The precise form of a letter report is less important than fulfilling the requirement that the circumstances of an incident be completely and promptly documented under the protection of the attorney work-product privilege. The ALR format shall be used when litigation is possible and protection of internal information/decisions from discovery is required. The ALR shall consist, at a minimum, of a letter from the command principally involved in an admiralty incident, addressed to the "Office of the Judge Advocate General (Code 11)", with the facts of the case stated in narrative form. The ALR shall include as enclosures, unsworn summaries of witness statements (written witness statements shall not be taken, but if a statement is already in existence, it shall be preserved and forwarded with the report), copies of documents, photographs (including negatives), contracts, medical records, and other supporting information. Also, include the full name, rates/ranks, Social Security numbers (for future witness tracking), and billets for all: witnesses; principles in the chain-of-command (CO, XO, CMC, Department Head, Division Officer, LCPO, LPO); watch-standers; and medical response personnel as appropriate. All civilian entities must be completely identified and copies of contracts bearing on damage should be enclosed. The report should not include opinions or recommendations and should not be endorsed by the convening authority or chain-of-command. Instead, the original report and original enclosures shall be forwarded directly (advance copy by E-Mail or FAX) to OJAG (Code 11) pursuant to section 1202b. The investigating officer shall be appointed, in writing, by the convening authority using the sample format in Appendix A-12-a. A sample ALR is contained in Appendix A-12-b. The information contained in an ALR shall not be disseminated to any individual or organization not directly involved with the conduct of the investigation without prior authorization of OJAG (Code 11). Any unauthorized dissemination may result in waiver of legal rights to the detriment of the U.S.

c. Command Investigation. For some admiralty incidents, a convening authority may determine that concerns outside of litigation such as safety, operational requirements, or accountability outweigh the desire to protect the Government's interests in internal information/decisions in litigation, or that the probability of litigation is unlikely. Under these circumstances, the command investigation format discussed in Chapter II is appropriate. An advance copy of any command investigation involving an admiralty incident shall be forwarded to OJAG (Code 11) as soon as possible, with endorsements to follow when completed.

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d. Dual-Purpose Investigation. When a convening authority is faced with an incident involving concerns of safety, operational requirements, or accountability and OJAG (Code 11) also anticipates litigation, a Dual-Purpose investigation may be used to protect privileged information while allowing the investigation to be used for other official purposes (e.g., disciplinary action, safety, etc.). The Dual-Purpose investigation report shall adhere to the procedures set forth for an ALR whenever possible. However, the Dual-Purpose investigation report may include opinions or recommendations and may be endorsed by the convening authority or chain-of-command if appropriate, but those portions may be subject to discovery in litigation or release under the Freedom of Information Act. The initial report shall be forwarded to OJAG (Code 11) with endorsements to follow when completed. Appendix A-12-c contains a sample Dual-Purpose investigation appointing letter.

e. Court of Inquiry. The following additional considerations are relevant in admiralty cases involving courts of inquiry.

(1) When investigating collisions or allisions with civilian vessels, personnel of the privately owned vessel will not be designated parties to the investigation or accorded such rights. They may, however, be invited to appear as witnesses with counsel while testifying. Such invitations are usually declined on advice of counsel. If invitees elect to appear, neither those individuals nor their counsel may be present when other witnesses are testifying.

(2) Witnesses from a privately owned vessel testifying before a Naval investigation should be furnished a copy of their testimony as a matter of written record, and the witnesses should be requested to inform the investigating officer or convening authority of any errors in the transcript. This increases the value of the record for its possible effectiveness for impeachment in later litigation. Opposing interests are not furnished a copy of the investigation report or any information on the testimony of Naval witnesses.

(3) In a court of inquiry, it usually is not advisable to subpoena witnesses from the private vessel involved in a collision with a Naval vessel because the record of the Naval inquiry would then be discoverable.

(4) If submission of the investigation report will be significantly delayed, an advance copy of the transcribed testimony at the investigation should be forwarded to OJAG (Code 11).

f. Relation to damage survey. A formal joint survey of damages, described in section 1206, is not a substitute for a command's investigative report of an admiralty incident.

g. Release of investigative report. No individual or command, other than OJAG (Code 11), may release an ALR investigation or Dual-Purpose investigation report of an admiralty incident, or any portion, to any individual or organization not directly involved in the conduct of the investigation itself, involved in critical self-analysis of the incident, or involved in preparation for litigation on behalf of the Government. See SECNAVINST 5720.42 (series) and SECNAVINST 5820.8 (series). A command contemplating release of a command

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investigation of an admiralty incident to a potential claimant, an attorney purporting to represent a claimant, or any other private person or organization shall first consult with OJAG (Code 11), see section 1211.

1206 SURVEYS

a. Claim asserted. When a claim for damage to property arising from an admiralty incident is asserted, the party contemplating such a claim usually invites the allegedly responsible party or parties to a formal joint survey of the damage. If invited to attend a joint marine survey to be conducted by the opposing party, OJAG (Code 11) shall be consulted to determine if Navy attendance and participation is necessary or desired. Otherwise, OJAG (Code 11) will determine whether a joint maritime survey is warranted and will make the necessary contractual arrangements. A survey minimizes subsequent disputes on the nature and extent of damage attributable to a particular incident, and provides a reliable estimate of the cost of repairs. If a claim is not settled administratively, the survey report can eliminate questions of proof during litigation. Failure to give opposing interests an opportunity to survey damage allegedly resulting from an admiralty incident places a heavy burden of proof on the party later seeking to establish such damage at trial. In most admiralty cases with substantial damage, whether involving potential claims by or against the U.S., a joint survey of the damage will be desired.

b. Determination of damage. The survey is the formal, technical, joint survey held by representatives of the two (or more) parties involved. It is not an *ex parte* appraisal, as is used in the DON's internal investigation of an incident or with the disposal of worn or damaged Naval material. Nor should a joint survey of damage be confused with the survey conducted on civilian vessels by representatives of marine underwriters following damage incidents. Rather, for a formal joint survey of damage, each party normally appoints its own surveyor who, with the other surveyor(s), examines the damage and attempts to reach agreement on the extent of damage from the casualty. The survey report lists items of damage and recommended repairs. When all parties agree, the surveyors sign the report to record their concurrence; surveyors normally sign without prejudice as to liability. If there is disagreement, disputed points are specifically noted. No surveyor subscribes to any statement in the survey report when he disagrees.

c. Timeliness. Surveys must be held as soon after the casualty as possible. Surveys are arranged and funded by OJAG (Code 11). DON personnel should refrain from inspecting damage with an opposing party's surveyor. DON participation may be mistaken for the Navy's official participation in the joint survey.

d. Acceptance of survey invitation. Only OJAG (Code 11) may accept survey invitations from potential claimants, extend survey invitations to persons allegedly responsible for damaging Naval property, and request representation by a marine surveyor at the survey. If any Naval activity receives an invitation to attend a survey of damage, OJAG (Code 11) must be notified immediately.

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1207 EVIDENCE PRESERVATION

a. Original documents. The Government's position may be materially prejudiced if an original document is not available at trial. No apparently relevant original document should be destroyed or discarded without the prior approval of OJAG (Code 11). Photocopies of pertinent official documents are acceptable for investigative reports under section 1205; however, original logs, rough statements, chronologies, and other documents must be segregated and safeguarded for possible future use at a trial. Because a trial may occur years after the incident, the custodian must ensure the materials are not inadvertently discarded by persons unfamiliar with the admiralty incident and the reasons for preserving the documents. If possible, all original documents and photographs (including negatives) should be labeled as originals and forwarded to OJAG (Code 11) for retention.

b. Use of documents at trial. Although originals are required at trial, the original is produced for inspection only and does not become part of the court record. The court attaches a copy to the record of trial and returns the original to OJAG (Code 11) for forwarding to the appropriate command.

c. Photographs and video. Photographs and video can be valuable enclosures to admiralty investigations, especially when taken near in time to the incident. They illustrate property damage, angle of collision, size and condition of equipment, and physical layout of a space where an injury occurs. Commands may use official photographers or other persons to take photographs. Record on the reverse side of each photograph: the hour and date it was taken; a brief description of the location or area photographed; the full name, rank or rate, and Social Security number of the photographer; and full names and addresses of persons present when the photograph was taken. Similar information should be affixed to videotape, DVD, CD-ROM, or other media. This information is important so photographs or video can be authenticated and identified by witnesses during litigation. Photographic negatives should be segregated and safeguarded for possible future use.

d. Logs. No erasures should be made in a logbook or original navigation record. Make corrections by lining through the original so that it is still legible and inserting the correction. The person making the change should initial the original entry and correction.

e. Electronic files. All E-Mail and electronic files associated with an admiralty incident must be segregated and preserved pending guidance from the assigned admiralty attorney.

f. Physical evidence. All physical evidence (e.g., lines, equipment) must, if practical, be segregated and preserved, pending guidance from the assigned admiralty attorney.

1208 COLLISION AND ALLISION CASES

a. Documentary evidence. Commanding officers shall ensure that all documentary evidence is collected and safeguarded immediately after any collision or allision involving a Naval vessel. Witnesses shall not be asked

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to produce written or recorded statements, logs, or drawings. Once an investigating officer has been appointed in writing, summaries of witness statements shall then be obtained. If any written statements, personal logs or drawings concerning the incident are discovered, they shall be preserved and the originals included as enclosures to the subsequent investigation. The following are among the original records which normally shall be preserved for the investigative report (note that not all below-listed logs and records are relevant in every case):

(1) Deck log;

(2) Bell book;

(3) Engineering log;

(4) Chart in use (do not erase markings or continue to use once a collision or allision has occurred);

(5) Combat Information Center (CIC)/Combat Direction Center (CDC) watch log;

(6) Surface/Subsurface tracker log;

(7) Position log;

(8) Bearing book;

(9) Magnetic compass record;

(10) Deviation data, azimuth records and course recorder records (to include Shipboard Inertial Navigation System (SINS) or Electrostatic Gyro Navigator (ESGN) printout if installed);

(11) Fire control system printouts reflecting contact data;

(12) Commercial Outboard Logistics Upgrade (COBLU) position data;

(13) Contact Evaluation Plot (CEP) (onboard submarines);

(14) Radar log(s);

(15) Fathometer log;

(16) Weather log;

(17) Dead Reckoning Tracer (DRT) plot (annotated with the DRT operator's name, scale, and time period covered);

(18) Bridge and CIC/CDC maneuvering board worksheets;

(19) Photographs of bridge and CIC/CDC status boards (do not erase markings or continue to use once a collision or allision has occurred);

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(20) Photographs of bridge and CIC/CDC radar repeater scope faces with grease pencil markings. (Do not erase markings or continue to use once a collision or allision has occurred. If possible, remove the scope face cover to preserve the markings.);

(21) Bridge to bridge VHF radiotelephone log;

(22) Bridge and CIC/CDC radiotelephone logs and recordings (such as from an RD390);

(23) Underwater telephone log;

(24) Communication and signal logs;

(25) All messages relating to the incident (classified and unclassified, from every net, whether transmitted or received);

(26) Command and Decision (C&D) System recordings;

(27) Joint Maritime Command Information (JMCIS) or Global Command and Control System - Maritime (GCCS-M) track data;

(28) Navigation Sensor System Interface (NAV SSI) information;

(29) Engineering systems electronic data records;

(30) Bridge, CIC/CDC, and engineering standing orders (with signature log);

(31) CIC/CDC and Engineering Doctrines, Ship's Organization and Regulation Manual(s) (watch-stander duties and procedures);

(32) Night orders (with signature log);

(33) Any audio or videotapes that recorded any aspect of the incident (including U.S. Coast Guard bridge-to-bridge recordings);

(34) Damage control boards (do not erase markings or continue to use once a collision or allision has occurred);

(35) Damage control reports;

(36) Training and qualification records for all Bridge, CIC, Deck Division, and engine room watchstanders; and

(37) Global Positioning System (GPS) data.

b. Safeguard records. To preserve all records of first entry, collect and safeguard rough logs, notebooks, and individual sheets of paper containing navigational or other data later recorded in a smooth log, noting who recorded the particular information.

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c. Conflicts of time. Conflicts between times of entries in various logs often cause difficulty in litigation. Comparisons of the clocks in the bridge, CIC, engine room, radio room, etc., should be recorded as soon as possible after a collision or allision.

d. List of officer and enlisted watch-standers. Completely list all officer and enlisted watch-standers on the bridge (including lookouts), signal bridge, CIC, and engine room at the time of the incident, as soon as possible after the incident. The identity of any other person who was in CIC, on the bridge, or otherwise topside when a collision or allision occurred, also should be noted. This list shall contain the full name, rank/rate, Social Security number, and watch-station of each individual.

1209 DOCUMENTING COLLISION DAMAGE AND REPAIR COSTS

a. Elements of Naval damages. In almost all collisions where the other vessel is at least partially at fault, the U.S. will assert a claim against that vessel for the costs incurred in repairing the Naval ship. Establishing the value of the DON's damage claim is often extremely difficult. The claim arising from a collision or allision may include the cost of:

(1) Temporary and permanent hull repairs;

(2) Dry-docking;

(3) Lost or damaged equipment, stores, provisions, fuel, and ammunition;

(4) Off-loading and reloading fuel and ammunition;

(5) Towage and pilotage;

(6) Personnel claims paid to crewmembers who suffered personal property losses due to the collision;

(7) Survey fees;

(8) Detention; and

(9) Emergency assistance by other Naval commands to the Naval vessel involved.

b. Collision repairs. Collision repair specifications should concur with the findings and recommendations in the joint survey report. If significant additional damage not covered by the original survey is discovered during repairs, OJAG (Code 11) should be notified immediately so opposing interests may be contacted for a chance to survey newly discovered damage.

c. Repair costs. The Naval Sea Systems Command directs its field activities to maintain separate and exact records of collision repair costs and to expedite the furnishing of data to judge advocates preparing damage statements. Usually, original repair specifications, job orders, time and

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material cards, dry-docking report, and departure report are needed for damage statements. Coordination with the repair activity is necessary. The vessel's logs must contain entries establishing the specific time the collision repairs were commenced and completed. A departure report must be checked to confirm that its data is consistent with other repair documents and that there is a proper allocation of costs between collision and non-collision items, as reflected by the job orders.

d. Non-collision work. All non-collision work must be covered by separate job orders to eliminate including non-collision work in the collision repair costs.

e. Commercial shipyard repairs. When Naval vessels will be repaired in commercial yards rather than Naval shipyards, invitations to bid are issued to commercial shipyards and the contract is awarded to the low bidder. The collision repair specifications should be based on the surveyor's findings and recommendations. The shipyard's bill or invoice and proof of DON payment shows repair costs for those items performed by the commercial shipyard. As with repairs done by a Naval shipyard, non-collision work should be covered by separate specifications, job orders, bids, and invoices.

f. Detention costs. When a commercial vessel must be withdrawn from service because of collision damage, her owner may recover the vessel's loss of earnings and reasonable expenses incurred during the repair period. This loss of earnings rule does not apply to Naval vessels since they do not carry passengers or cargo for profit.

(1) When a collision causes the unexpected loss of use of a Naval vessel, however, the Government may recover the operating and maintenance costs of the ship for the period the DON was deprived of the vessel's normal service. Detention is not legally recoverable when a vessel would have otherwise been out of service, such as for periodic overhaul or prospective inactivation. Detention includes out-of-pocket expenses for the repair period, particularly--

(a) Pay and allowances of officers and crew;

(b) Subsistence of crew;

(c) Fuel and lube oil consumed; and

(d) Supplies and stores consumed.

(2) To support a detention claim, the DON's damage statement includes documentary evidence showing the exact subsistence, wages, and other expenses of the vessel. Affidavits from the cognizant supply, disbursing, and engineering officers stating that the original ship's records (that must be preserved) disclose such expenditures will support the claim. OJAG (Code 11) will provide advice and assistance on preparing affidavits and other documentation in support of a detention claim.

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g. Prompt repairs. Collision repairs to a Naval vessel should be made as expeditiously as practical, especially when a detention claim is being presented by the Government. A short repair period avoids the "skeleton crew doctrine," where the DON would recover as detention costs only the pay, allowances, and subsistence for a skeleton crew, rather than the full complement of members, when an extended repair period was involved.

1210 PERSONAL INJURY CASES

a. Generally. Any shipboard death or injury to an individual not a member of the armed forces of the U.S. is an admiralty incident. See section 1203d. This section applies to injuries to persons ascending or descending a brow, gangway, or accommodation ladder, or to injuries to persons on a pier or on another vessel as a result of events taking place on board the Naval ship. Notify OJAG (Code 11) immediately of such accidents so the incident is investigated as required by sections 1203 through 1205.

b. Types of victims. Victims include any person who is not an active duty member of the U.S. Armed Forces, injured while onboard any Naval vessel, or the brow, gangway, ladder or other maritime property attached to a vessel, or a person injured on a pier or otherwise near the vessel as a result of an incident that occurs onboard a vessel. The following classes of people may be considered victims in injury cases: ship workers, guests, dependents, ship repairmen, contractor technical representatives (tech reps), longshoremen, stevedores, maintenance and sanitation workers, harbor and river pilots, civilian mariners, and persons rescued from maritime distress.

c. Considerations in any investigation. When investigating any personal injury or death case, consider:

(1) Logs. All shipboard injuries to persons not members of ship's company should be recorded in the ship's deck log. The occurrence may be mentioned in other logs, such as the engineering log when the incident occurs in an engineering space, or in the medical log if care is rendered by the medical department. All logs which might possibly contain an entry about the incident should be inspected by the investigating officer, and photocopies of each log containing a relevant entry should be included in the investigative report. When copying a log, copy the entire day's log, not just the page containing the relevant entry. If no entries on an injury are found in any log, it may indicate the victim was not hurt seriously enough to report the injury to the officer of the day or to request immediate medical assistance. Clearly identify logs reviewed and indicate that no entry was found on the alleged occurrence.

(2) Witnesses. Clearly identify all Naval and civilian witnesses to the accident. Identify all persons in the space at the time of an accident, even if they claim not to have seen or heard anything. For Naval personnel, include the member's full name, rank/rate, and Social Security number. For civilians, include the person's full name, home address, and telephone number. If the person is a civilian shore worker, also include his badge number, employer, and shop where the person is employed. It is also useful to identify the ship's personnel normally in charge of the particular space

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(division officer, LPO, DCPO) so they may be contacted to comment on the space's cleanliness, upkeep, and general repair.

(3) Witness statements. The investigating officer should prepare a summary of the interview with the witness, rather than having the witness write, sign, or adopt a statement. Many civilian shore workers may be reluctant to prepare or sign a written statement, especially when one of their fellow workers is involved. Frequently they will provide a statement to their employer, which the investigating officer may obtain by requesting a copy of the employer's accident report. If an apparent witness declines to provide any information, it is extremely important to obtain the precise identifying data mentioned in the preceding paragraph.

(4) Inspection of the accident site. A claim or suit by an injured shore worker or visitor is based on a contention that the ship was negligently maintained or operated. A post-accident inspection can be corroborated by evidence of other inspections (zone, safety, or health and comfort) closely preceding the incident. Evidence that qualified personnel (DCPO, LPO, division officer, safety officer, or investigating officer) carefully inspected a site immediately following an accident and found the area free from defects is especially important when there is no eyewitness to the injury. The post-accident inspection should focus on conditions likely to have contributed to the particular incident. For example, if the victim was injured in a fall, the inspection should include the quality of the footing (Was the deck or ladder wet or greasy? Were the ladder treads worn?), lighting in the space, and existence of structural conditions and protuberances that might cause an individual to fall. Similarly, if the injury resulted from the failure or giving-way of any of the vessel's gear or equipment, a careful examination to discover the cause of the failure should be made, and, if feasible, the gear should be carefully preserved. Whenever possible, a post-accident inspection should include photographs of the accident location (or gear involved) before any changes are made after the incident. See section 1207c. Furthermore, if a defective condition is uncovered, the inspector should attempt to determine how long the condition has been in existence, who (individual and employer) created the condition, and, if created by someone other than a U.S. employee, whether any crewmembers learned of the defective condition prior to the accident. Finally, Planned Maintenance System (PMS) records for a space or piece of equipment should be consulted and retained when a defective condition is found.

(5) Medical records. Include copies of all Naval medical records of treatment by Naval personnel in an investigative report of a death or injury. The investigating officer should not delay an investigation to obtain detailed medical records from a civilian hospital, physician, or the injured party. The investigating officer should determine the general nature of the victim's injuries from reports and records readily available to the DON.

d. Shore worker injuries. For a shore worker injury investigation, an accident report and/or an employer's report of injury may be obtained from the injured worker's employer, the shipyard safety office, or the cognizant office of the Supervisor of Shipbuilding, Conversion and Repair, USN (SUPSHIP).

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e. General visiting and ship tours. In addition to paragraph c of this section, investigative reports of an injury occurring during general visiting or tours of the ship should comment on warnings given to visitors (conspicuous signs, printed warnings on brochures provided, and verbal warnings by a tour guide), and presence of crewmembers on the tour route to assist visitors and correct any hazardous conditions noted.

f. Civilian Federal employees. If a civilian Federal employee died or was injured in the course of employment in an admiralty incident, report it immediately to OJAG (Code 11). The Federal Employees Compensation Act (FECA) is the sole means of redress against the U.S. for such individuals. See 5 U.S.C. §§ 8101-8193. Accordingly, investigative responsibilities for these cases will be streamlined and OJAG (Code 11) will provide guidance. If the victim is injured outside the course of employment, FECA does not apply, and the case is investigated as any other personal injury or death case.

1211 CORRESPONDENCE WITH PRIVATE PARTIES

a. Forward to OJAG (Code 11). All correspondence received by a command on an admiralty incident, especially that from a claimant or an attorney purporting to represent a claimant, shall be forwarded expeditiously to OJAG (Code 11) for reply. Under SECNAVINST 5820.8 (series) and SECNAVINST 5720.42 (series), OJAG (Code 11) is responsible for processing requests for DON records, for access to DON property and information, or for interviews of Naval personnel in admiralty matters. These requests often precede claims or lawsuits against the U.S.

b. Naval personnel. All Naval personnel contacted by a claimant or by a claimant's attorney on an admiralty incident should not give a statement or make any admissions which might prejudice the Government's case. Rather, the member should report the contact to the commanding officer, who will inform OJAG (Code 11).

c. Admission of liability. Naval personnel shall not advise a claimant to forward a repair bill so the DON can "take care of it." This advice may mislead the claimant and serve as a later charge that the DON admitted liability. Similarly, avoid any informal, off the record assurances of probable recognition of a claim.

1212 COAST GUARD AND NATIONAL TRANSPORTATION SAFETY BOARD INVESTIGATIONS

a. Coast Guard investigations of marine casualties

(1) The Coast Guard routinely receives reports of and investigates marine casualties or accidents involving privately owned vessels. "Marine casualty or accident" includes collisions, strandings, groundings, founderings, heavy-weather damage, fires, explosions, failure of vessel gear and equipment, and any other damage that might affect the seaworthiness of the vessel. Public vessels of the U.S. and all Naval vessels are exempt from investigation even if involved in the incident under investigation. Naval personnel are not required to report a marine casualty involving a public

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vessel to the Coast Guard, complete any Coast Guard form or other document describing the maritime incident, or participate in a Coast Guard investigation. See 46 C.F.R. Part 4. The incident must be reported to OJAG (Code 11) under sections 1203 and 1204.

(2) The DON may assist the Coast Guard with its investigation by sharing information from the DON's own investigation and making Naval personnel available as witnesses, but the DON will not prejudice its claims or litigation. Information disclosed to the Coast Guard normally becomes part of a public record of the incident and is available to interests opposed to the U.S. OJAG (Code 11) decides whether to disclose a Naval investigation to the Coast Guard and whether Naval personnel will be made available to testify at a Coast Guard investigative hearing. Requests for such information, reports, or witnesses should be forwarded to OJAG (Code 11) by E-Mail or FAX.

(3) OJAG (Code 11) may provide a copy of the DON's investigative report of an admiralty incident to the Coast Guard investigator when issues of civil liability are not involved or have been settled. In other situations, OJAG (Code 11) may give the Coast Guard a copy of DON'S report only if it is used exclusively for Coast Guard purposes and not made part of the public record. This practice assists the Coast Guard's understanding of the incident, supports DON's policy of interagency cooperation, and preserves the Government's position on claims or litigation.

b. National Transportation Safety Board (NTSB) investigations of marine casualties

(1) The NTSB, an independent Government agency, promotes transportation safety by conducting independent investigations of accidents involving Government regulated transportation: air, highway, rail, pipeline, and major maritime casualties. The NTSB may conduct an investigation of any casualty involving public and nonpublic vessels. The NTSB shall conduct an investigation when: the casualty involves a Coast Guard and a nonpublic vessel, and at least one fatality or $75,000 in property damage; the Commandant of the Coast Guard and NTSB agree that NTSB should investigate a casualty involving a public (e.g., a U.S. Navy) vessel and a nonpublic vessel, and involving at least one fatality or $75,000 in property damage; or the casualty involves "significant safety issues relating to Coast Guard safety functions." See 49 U.S.C. §§ 1101 - 1155 and 49 C.F.R. parts 845 and 850.

(2) The NTSB investigation does not have priority over other official inquiries into major marine casualties, such as the DON's JAGMAN investigation. The NTSB conducts a simultaneous but separate investigation from the JAGMAN investigation. After a major marine casualty, ensure original documents are preserved and witnesses (after any exercise of their right to counsel) are made available to the DON's investigating officer. Do not have any Government witnesses make written statements, create logs, or draw pictures or diagrams relating to the incident unless directed by the investigating officer after consultation with OJAG (Code 11). However, the investigating officer shall preserve all written statements, logs, diagrams, or other documents related to the incident then in existence. OJAG (Code 11) shall approve all requests for production of witnesses, documents, visits, expert analysis, or testimony. Release of information without approval is not

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authorized and may jeopardize Government interests in litigation arising from the incident. Availability of Government witnesses and evidence shall be coordinated by the DON liaison officer point of contact (POC) (discussed in subparagraph (3)) and the investigating officer with approval of OJAG (Code 11). NTSB has subpoena power, enforceable through the Federal courts, for the production of persons and documents. The DON's policy is to cooperate with the NTSB's investigation as much as possible, while safeguarding the rights of individuals involved in the incident, protecting the Navy's attorney work-product and critical self-analysis privileges, and preventing unnecessary disruption of the JAGMAN investigation.

(3) Usually NTSB announces whether it will investigate within one day after the incident occurs. An NTSB official in Washington D.C. notifies the type commander of the Naval vessel involved by telephone; although, the group or squadron commander may receive initial notification. Upon notice of NTSB involvement, notify OJAG (Code 11) by telephone of the initial notice from NTSB and any requests from NTSB. If available, OJAG (Code 11) may assign an admiralty attorney to represent the interests of the Navy in potential litigation as counsel at all NTSB hearings involving admiralty incidents. A judge advocate shall be assigned by the nearest Region Legal Service Office (RLSO), or cognizant Region Commander or Type Commander to assist the admiralty attorney, or in the absence of an admiralty attorney, shall consult OJAG (Code 11) and represent the Navy's interests in potential litigation before the NTSB Board. The POC shall consult with the appointed attorneys prior to making any statements or other representations on behalf of the Navy, questioning any witnesses, or otherwise providing information, documents, explanations, or advice of any kind. Prior to any NTSB hearings or visits, the OJAG (Code 11) admiralty attorney or assigned judge advocate shall brief the POC on the contents of SECNAVINST 5820.8 (series) and the limits of the POC's authority to provide information or assistance to the NTSB or any other entity outside the DPN. If questions arise that cannot be resolved by the appointed attorneys, the POC shall immediately consult with OJAG (Code 11) for a determination on the issue. Also, a DON liaison officer must be appointed as POC for NTSB and as a Navy representative at any NTSB hearings. The POC should be of the rank of O-4 or above, technically competent in shipboard navigation and engineering skills, and not a crewmember of the vessel involved.

(4) NTSB may request to inspect documents and interview DON crewmembers as soon as the vessel involved arrives at the pier. The POC should insist that the JAGMAN and NTSB investigations proceed in an orderly fashion. The following is suggested as a reasonable sequence of events:

(a) When the ship returns to port, the investigating officer for the JAGMAN investigation should have been assigned. If not transported to the ship while at sea, the investigating officer should immediately collect and review charts, logs, and other documents aboard the ship, and may commence interviews of crewmembers.

(b) Within a few days of the ship's return, and under arrangements made by the POC, the NTSB (generally three to four officials) arrives on board and is provided with copies of unclassified relevant documents. Only after the investigating officer has interviewed witnesses and OJAG (Code 11) has

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consulted with the DOJ may NTSB officials conduct preliminary crewmember interviews or formal questioning of Government witnesses at a hearing, but sworn statements should not be permitted. All Navy witnesses to be interviewed by the board should be advised by the POC or the assigned judge advocate that during any interview with NTSB officials (regardless of the form), that they have the right to be accompanied, represented, or advised by an attorney or non-attorney representative. All Navy witnesses may seek advice from a judge advocate assigned to a Naval Legal Service Office (NLSO), but may not be represented by that counsel during an NTSB hearing or questioning. Document review, preliminary interviews, and hearings may take from two days to two weeks depending on the magnitude of the incident.

(c) The JAGMAN investigation is completed as soon as possible. The convening authority forwards an advance copy to OJAG (Code 11) under section 1205.

(d) The judge advocate that attended the NTSB hearing should obtain a copy of the verbatim transcript and summary report of the hearing from the POC and forward them to OJAG (Code 11).

1213 MARITIME OIL/HAZARDOUS SUBSTANCE SPILLS

a. OJAG (Code 11) strongly encourages dissemination of information necessary for effective cleanup to authorities outside DOD while spill response and cleanup is underway. Requirements for timely and accurate reporting of oil and hazardous waste spills to Federal, state, and local agencies are set forth in OPNAVINST 5090.1 (series) and MCO P5090.2 (series). The Federal On-Scene Coordinator should be given all available information to assist with a rapid and complete cleanup. Similarly, state representatives have a strong interest in ensuring a proper response to the spill. Priority is given to halting the spill and cleaning it up. All unclassified information necessary for that purpose should be shared.

b. Shortly after cleanup is complete, a Naval activity may, consistent with response reports, confirm information which was or might have been released incident to cleanup concerning whether a spill has occurred, the specific source of the spill, the type of substance spilled, when the spill occurred, where the spill occurred, the preliminary estimate of how much oil was spilled, a description of the Navy's response efforts, and estimates of amounts of oil recovered. Information should be coordinated with cognizant Navy regional environmental counsel and OJAG (Code 11).

c. After the response is complete, however, the command should have due concern for the effective defense of the U.S. in claims and litigation resulting from the incident. OJAG (Code 11) adjudicates claims under admiralty tort law for property damage and natural resource damage stemming from Navy oil spills. In this regard, it is of utmost importance that only verified and accurate information is released to state or private authorities. Otherwise, multiple inconsistent statements may jeopardize the Government's interests in litigation. All statements made after the response is complete should be made in a manner that will not jeopardize the interests of the U.S.

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d. Upon report of a spill, local commands are customarily requested to prepare an ALR, which is privileged as attorney-work product and critical self-analysis, see section 1205b. This report is used exclusively by attorneys to defend the U.S. and not releasable to third parties at any time.

e. After an official report is forwarded to OJAG (Code 11), a command may be requested to release additional information to state authorities concerning the cause of the spill. To ensure the accuracy of information, causal and other information relating to an oil spill may be released only after approval by OJAG (Code 11) in light of the Government's interests in potential litigation. Such disclosures, if approved, should be identified or marked as "Post-Accident Remedial Measure Information." Requests for witness interviews shall be in accordance with the provisions and limitations of SECNAVINST 5820.8 (series).

1214 DISTURBANCE OF NAVY SHIPWRECKS, AIRCRAFT WRECKS, AND OTHER SUBMERGED PROPERTY

a. The attempted salvage, removal, looting, destruction, or desecration of Navy shipwrecks, aircraft wrecks, or other submerged property is an admiralty incident and should be reported to OJAG (Code 11).

b. DON ship and aircraft wrecks remain property of the U.S., without regard to geographic location or age, and are not considered to be abandoned unless a formal determination to abandon the wreck is made pursuant to law.

PART C -- ADMIRALTY CLAIMS

1215 ADMINISTRATION OF DEFENSIVE ADMIRALTY CLAIMS

a. Generally. It is DON policy to settle admiralty claims fairly and promptly when legal liability exists. Administrative settlement of admiralty claims eliminates the expense and delay of litigation while obtaining a result advantageous to the financial interests of the U.S. Litigation is likely when settlement cannot be arranged.

b. Assistance to claimants. Refer claimants or potential claimants inquiring about rights or procedures to OJAG (Code 11). The cognizant admiralty attorney will advise the individual how to present a claim, the address the notice of claim should be mailed to, and what, if any, evidence is required. An officer or employee of the Government cannot act as agent or attorney for another in the prosecution of any claim against the U.S. See 18 U.S.C. § 205. See chapter VII if this Manual for requests for legal assistance with claims against the U.S.

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1216 ADJUDICATING ADMIRALTY CASES AS FOREIGN CLAIMS

a. Foreign Claims Act. Admiralty claims arising in foreign countries may be adjudicated under the Foreign Claims Act (10 U.S.C. § 2734). Such claims are not handled as foreign claims without the prior authorization of OJAG (Code 11).

b. Copy to OJAG (Code 11). If permission is granted for an admiralty claim to be adjudicated under foreign claims regulations, OJAG (Code 11) shall be provided a copy of the Foreign Claims Commission proceedings and, if an award is made to claimant, a copy of the executed release.

1217 AUTHORITY FOR AFFIRMATIVE CLAIMS SETTLEMENT

a. Generally. The U.S. may pursue affirmative admiralty claims for most admiralty incidents and affirmative salvage claims. See 10 U.S.C. §§ 7623 and 7365, and 32 C.F.R. part 752.

b. SECNAV authority. The Secretary of the Navy has authority to settle, compromise, and receive payment for claims by the U.S. for damage to any property under the jurisdiction of the DON, if the damage was caused by a vessel or floating object, or is otherwise within admiralty jurisdiction. See 10 U.S.C. § 7623. The Secretary also has settlement authority for damage to property that the DON is responsible for, allowing subrogation claims accruing in favor of the U.S. For example, when the DON leases a privately owned pier which is damaged by a commercial vessel, and the lease obligates the DON to pay the pier owner for the damage, or when Naval property is damaged while leased to private interests and the DON assumes the risk of loss or damage, the DON may recover from the tortfeasor.

1218 SALVAGE

Salvage claims may be filed against the DON for compensation for towage and salvage services, including contract salvage, rendered to a Naval vessel or other property under the DON's jurisdiction. The U.S. may file claims for salvage services rendered by Naval vessels or units. Regulations on these claims are published at 32 C.F.R. part 752. Commanding officers of vessels or installations, or U.S. Government or contract harbor pilots, have no authority to waive salvage fees or claims on behalf of the Navy.

1219 FEDERAL INTER-GOVERNMENTAL ADMIRALTY INCIDENTS

a. Waiver doctrine. Potential claims for collisions between vessels and for other admiralty incidents involving property damage, when the owners involved are the DON and another Government agency, are subject to waiver. The waiver doctrine is based upon Comptroller General decisions that appropriations of one Government department are not available to pay the claims of another.

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b. Report of incident. When it appears only Federal Government interests are involved, a report of the admiralty incident must be made under sections 1203 and 1204; however, an investigation of liability and survey of damage are not required. Upon receiving the initial report of the incident, OJAG (Code 11) confirms the status of the vessels or property involved by correspondence with the other Government agency, and the waiver is made a matter of record. It is important to avoid unnecessary labor and expenditures when the claim is subject to waiver. If in doubt on the status of the other vessel or property, request advice by rapid means from OJAG (Code 11).

1220 FOREIGN GOVERNMENT CLAIMS

a. Report to OJAG (Code 11). Admiralty incidents involving Naval vessels or property, and a vessel or property owned by a foreign government, must be reported to OJAG (Code 11) under sections 1203 and 1204. Action on such claims may be affected by treaties, international law, and Federal statutes. For example, the Foreign Sovereign Immunities Act recognizes a foreign nation's immunity for sovereign or public acts of that nation in U.S. territory and limits immunity for commercial or personal acts. See 28 U.S.C. §§ 1604-1611.

b. Jurisdictional process. Under customary international law, a nation's public war vessels are not subject to jurisdictional process in any other nation; all Naval vessels (including MSC vessels) are immune from arrest. If an attempt is made to arrest a Naval vessel in a foreign country, include NAVY JAG WASHINGTON DC//11// as an information addressee in the message report of the arrest attempt. If requested, OJAG (Code 11) will then assist DOJ and Department of State to obtain the ship's immediate release.

c. Immunity. Government-owned merchant ships have limited immunity from jurisdictional process of a foreign state. For example, a foreign government-owned vessel is exempt from U.S. jurisdiction if devoted to public use or Government operations; however, the immunity of foreign government-owned merchant vessels in competitive commercial transactions may be restricted.

d. Waiver agreements. The U.S. has waiver agreements with the British and Canadian governments so certain maritime claims between the U.S. and Great Britain or Canada, arising out of the operation of public vessels of these respective governments, are waived. See Maritime Transportation and Litigation Agreement with Great Britain, 4 December 1942, 56 Stat. 1780, E.A.S. 282; and Waiver of Claims Involving Government Ships Agreement with Canada, November 15, 1946, 61 Stat. 2520, T.I.A.S. 1582. These admiralty incidents do not require the usual investigative report or survey for claims purposes.

e. Status of Forces Agreements. Admiralty claims are also affected by Status of Forces Agreements. Under Article VIII of the NATO Status of Forces Agreement, an inter-governmental admiralty claim for damage to property owned and used by the armed forces of one contracting party, caused by a vessel of another contracting party, is waived if either the damaging vessel or the damaged property was used in the operation of the North Atlantic Treaty. Similarly, under Article XVIII of the Status of Forces Agreement with Japan,

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the U.S. and Japan mutually waive claims for property damage caused by members of their defense forces if the damaging instrumentality or the damaged property was being used for official purposes. A similar provision is in the Status of Forces Agreement between the U.S. and the Republic of Korea.

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SAMPLE ADMIRALTY LETTER REPORT APPOINTING LETTER

5800
Ser
[Date]

From: Commanding Officer, USS _____
To: LT _____

Subj: ADMIRALTY LETTER REPORT INVESTIGATION OF _____
INVOLVING _____ ON _____.

Ref: (a) JAGMAN, Ch. XII

1. Per reference (a), you are hereby appointed to investigate the circumstances surrounding _____. During the investigation you will be under the direction and supervision of _____, JAGC, USN, Admiralty Attorney, 202-685-5040 (DSN: 325-5040). Consult with _____ before beginning your inquiry or collecting any evidence. If you have not already done so you should read reference (a) for additional guidance.

2. This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing interests of the U.S. in this matter. As such, it is privileged and should be discussed only with personnel who have an official need to know of its progress or results. If you have any doubt about the propriety of discussing the investigation with any particular individual, then you should seek guidance from _____ before doing so.

3. Investigate all facts and circumstances surrounding the incident, including the cause, resulting injury, and any fault, neglect, or responsibility therefore. Report your findings by letter format to _____ by _____ unless an extension of time is granted. Do not express any opinions or recommendations unless _____ directs you to do so. Label your report "FOR OFFICIAL USE ONLY: ATTORNEY-WORK PRODUCT" and take appropriate measures to safeguard it.

X. X. XXXX

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SAMPLE ADMIRALTY LETTER REPORT
(Bold portions should always be included in every report)

FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY-WORK PRODUCT

5880
Date

From: [command]
To: **Office of the Judge Advocate General (Code 11)**

Subj: **ADMIRALTY LETTER REPORT OF** [personal injury of shore worker on date, etc.]

Ref: **(a)** PHONCON LT Exx (command)/LCDR Exx (OJAG 11) of 1 Jun 0x

Encl: (1) [Forward all relevant documentary and photographic evidence. Real evidence should be photographed and the location of its preservation should be noted in the text. Photos must be marked on reverse with description/photographer, etc. See JAGMAN para. 0215]

[Command Investigations under JAGMAN para. 0209 which include opinions and recommendations SHOULD NOT BE CONVENED FOR ADMIRALTY INCIDENTS because they are incompatible with the litigation process; See JAGMAN para. 0210 regarding comment on command administration and management.] [If there are command operational, organizational or management issues to resolve, then the command should conduct a separate command investigation, limited in scope, to address the specific command concerns. Navy Admiralty Counsel (OJAG, Code 11) should be consulted if any investigation other than the Admiralty Letter Report is considered.]

1. Pursuant to reference (a), the following information is provided. This is a detailed factual internal report of inquiry conducted after the occurrence of the subject event and under the direction and supervision of a Navy Admiralty Attorney [if applicable, and the named command judge advocate or other judge advocate assisting the on-scene investigation]. **This report is prepared in anticipation of litigation and for the express purpose of adequately preparing and assisting attorneys representing the interests of the Navy and the U.S. in this matter. This investigation was requested based upon an independent determination by the Navy Admiralty Counsel that a report is necessary to properly represent the Navy and the U.S. in litigation arising from this incident. As this report may only be released to those Department of the Navy or Department of Justice personnel with a demonstrated official need to know its contents, it was not and shall not be disclosed to anyone without the requisite official need to know. Incident to the subject investigation and preparation of the report thereof, the Department of the Navy has relied on the protection afforded by the attorney-work product privilege.**

2. [The form of the Admiralty Letter Report is not significant; that it includes all of the information necessary to prepare and resolve the case is important. While JAGMAN Chapter 12 no longer contains a precise format for ALR form and content, the chapter is generally applicable and paragraphs 1207 through 1210 provide helpful evidentiary requirements in various types of cases.]

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Subj: ADMIRALTY LETTER REPORT OF [personal injury of shore worker on date, etc.]

3. [Written summaries of witness interviews conducted at the request of the Admiralty Counsel are preferred to statements written, adopted or signed by witnesses because interview summaries may be withheld during litigation discovery. If witnesses prepared statements prior to appointment of preliminary inquiry, do not destroy them; append them as report enclosures.]

4. The investigating officer in this matter is [name and rank]; and may be contacted at [telephone number] and/or via E-Mail at [E-Mail address].

X. X. XXXXX
LT, USN

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SAMPLE DUAL PURPOSE LITIGATION REPORT APPOINTING LETTER
(Bold portions should always be included in every report)

5880
[Date]

From: Commander, _____
To: CAPT _____, USN

Subj: DUAL-PURPOSE LITIGATION REPORT INVESTIGATION OF THE _____INVOLVING USS ___AND _____ ON [Date]

Ref: (a) JAGMAN, Ch. XII

1. Per reference (a), you are hereby appointed to investigate the circumstances surrounding the collision involving _____. During the investigation you will be under the direction and supervision of _____, JAGC, USN, (XXX) XXX-XXXX (DSN: XXX-XXXX) and **_____, JAGC, USN, Admiralty Attorney, 202-685-5040 (DSN: 325-5040). Please consult these attorneys before beginning your inquiry or collecting any evidence. If you have not already done so, you should read reference (a) for additional guidance, especially section 1208.**

2. This Dual-Purpose investigation is to be conducted and report of investigation prepared in contemplation of litigation. The purpose of this internal report is to prepare attorneys to represent the legal interests of the Department of the Navy (DON) and the U.S. in litigation and to candidly and forthrightly evaluate and improve, if necessary, Navy procedures involved in this incident. This report is predicated on the forthright honesty of DON personnel to candidly self-evaluate incidents to prevent recurrence of similar incidents and to further the public interest and safety. Accordingly, this report may only be released to those DON or Department of Justice personnel with a demonstrated official need to know its contents. Releasing this report to those without an official need to know could hamper the honesty and candor of those who contributed to this investigation or who may contribute to future investigations. This is a report of internal investigation completed under the supervision of counsel. Incident to the subject investigation and preparation of the report thereof, the DON has relied on the protections afforded by the attorney-work product and critical self-analysis privileges. This investigation is privileged and should be discussed only with personnel who have an official need to know of its progress or results. If you have any doubt about the propriety of discussing the investigation with any particular individual, then you should seek guidance from counsel before doing so.

3. During the course of your investigation you are directed to refrain from taking written or recorded statements from any government witness. Instead, type summaries of witness interviews. However, you shall collect and include any statements already in existence. Also include all original charts, logs, photographs, video, E-Mail and other documentary or electronic evidence. Label items as discussed in reference (a).

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Subj: DUAL-PURPOSE LITIGATION REPORT INVESTIGATION OF THE _____INVOLVING USS ___AND _____ ON [Date]

4. Investigate all facts and circumstances surrounding the incident, including the cause, resulting injury and any fault, neglect, or responsibility therefore. You are also directed to develop opinions and recommendations that should focus on the safety and training issues involved to prevent recurrence and further the public interest in safety. Label your report "FOR OFFICIAL USE ONLY: ATTORNEY-WORK PRODUCT" and take appropriate measures to safeguard it.

5. Include the following language in the preliminary statement of your report: "This Dual-Purpose investigation was conducted and a report of investigation prepared in contemplation of litigation. The purpose of this internal report is to prepare attorneys to represent the legal interests of the DON and the U.S. in litigation and to candidly and forthrightly evaluate and improve, if necessary, Navy procedures involved in this incident. This report is predicated on the forthright honesty of DON personnel to candidly self-evaluate incidents to prevent recurrence of similar incidents and to further the public interest and safety. Accordingly, this report may only be released to those DON or Department of Justice personnel with a demonstrated official need to know its contents. Releasing this report to those without an official need to know could hamper the honesty and candor of those who contributed to this investigation or who may contribute to future investigations. This is a report of internal investigation completed under the supervision of the Admiralty Counsel of the Navy and _____, JAGC, USN, a judge advocate. Incident to the subject investigation and preparation of the report thereof, the DON has relied on the protections afforded by the attorney work product and critical self-analysis privileges. This investigation is privileged and should be discussed only with personnel who have an official need to know of its progress or results."

6. Report your findings of fact, opinions, and recommendations pursuant to reference (a), chapter II, to _____ by _____unless an extension of time is granted.

X. X. XXXX

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CHAPTER XIII

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CHAPTER XIII

ENVIRONMENTAL PROTECTION

1301 PURPOSE

The purpose of this chapter is to assist Navy and Marine Corps commanders in their efforts to protect and enhance the quality of the environment by strict adherence to all applicable law, regulatory standards, and planning requirements.

1302 SCOPE

This chapter does not reprint detailed guidance readily available elsewhere. It guides the reader to those sources where necessary. The Environmental and Natural Resources Protection Manual, OPNAVINST 5090.1 (series), and the Environmental Compliance and Protection Manual, MCO P5090.2 (series), set forth Navy and Marine Corps policies and responsibilities regarding environmental compliance. NWP 4-11 sets forth policy guidance regarding environmental compliance during peacetime, wartime, and military operations other than war (MOOTW). Appendix A-13-a of this Manual contains a list of selected references.

1303 BACKGROUND

Statutes and regulations regulate the use of natural and cultural resources and how we plan for their use. In many of these statutes, Congress has waived Federal supremacy and sovereign immunity. Therefore, Navy and Marine Corps operations are generally subject to State and local procedural and substantive requirements respecting the control and abatement of pollution, including requirements to obtain permits and to pay reasonable service charges. Failure to comply with applicable environmental laws may lead to environmental degradation, injunctions that disrupt operations, adverse publicity, and in some cases, payment of civil penalties. Additionally, some environmental laws carry criminal penalties for noncompliance, including possible criminal prosecution of military and civilian personnel. Therefore, familiarity with and adherence to applicable environmental laws and regulations is essential.

1304 ENVIRONMENTAL COMPLIANCE AND INTERNATIONAL OPERATIONS

a. Generally. Naval activities in foreign countries and Naval vessels, aircraft, and vehicles operated in foreign countries will comply with any applicable Status of Forces Agreement (SOFA) and with environmental pollution control standards of general applicability in the host country. Requests by foreign officials for access to Naval installations, vessels, aircraft, and vehicles to monitor compliance with host country environmental standards, if not governed by the SOFA, should be referred to higher authority via the chain-of-command.

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b. Ships and aircraft. U.S. military aircraft, warships, and auxiliaries (including USNS vessels and Afloat Prepositioning Force ships) enjoy sovereign immunity from interference by foreign governmental authorities. Foreign officials shall not be allowed access to ships or aircraft entitled to sovereign immunity for purposes of environmental inspection or examination. Commanding officers, masters, and aircraft commanders may certify compliance with host country environmental requirements. If foreign authorities are permitted onboard for the purpose of accepting certification of compliance, they shall not be permitted to exercise governmental authority while onboard. This prohibition includes conducting inspections or acting as observers while U.S. personnel conduct inspections.

c. Naval installations in foreign countries. Analysis of environmental compliance issues for these installations will depend on whether Final Governing Standards (FGSs) are in effect for the country or region in which the installation is located. FGS are a comprehensive set of country-specific substantive provisions, typically technical limitations on effluent, discharges or specific management practices developed by the responsible Environmental Executive Agent (EEA) for the country or region. OPNAVINST 5090.1 (series) contains a list of EEAs.

(1) Where FGSs are in effect. When FGSs have been issued by the EEA, U.S. Navy facilities must comply with them. Pursuant to DODI 4715.5, FGSs will take into account the requirements of applicable international agreements, applicable host-nation environmental standards under Executive Order 12088, and the Overseas Environmental Baseline Guidance Document (OEBGD).

(2) Where FGSs are not in effect. If the responsible EEA has not promulgated FGSs for the country or region, U.S. Navy facilities will comply with the DoD OEBGD, applicable international agreements, and applicable host-nation environmental standards under Executive Order 12088. In case of conflicting requirements, the facility will comply with the standard that is more protective of the human environment. In such a case, the facility must consult with the EEA on actions that involve a substantial commitment of funds or that could set a precedent.

1305 RESPONSIBILITY

a. Generally. Compliance with the law and applicable regulations are essential to preserving the environment. Naval activities should cooperate with Federal and State environmental protection agencies and comply with applicable standards and criteria promulgated by such agencies. Commands will comply with the reporting requirements established by superiors and notify OJAG (Code 14) in accordance with Chapter VI of this Manual when there is any likelihood of civilian court involvement. When it is considered impractical to comply with applicable requirements, commanders should refer the matter to the Chief of Naval Operations (N-45) or Commandant of the Marine Corps (MC-LFL-7), as appropriate, via the chain-of-command.

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b. Commanding officers. Consistent with existing directives and policy guidance, commanding officers should coordinate and cooperate with Federal, State, interstate, and local pollution control agencies, and adhere to applicable standards for the control and abatement of environmental pollution. Commanding officers should consult with counsel on environmental issues.

c. All personnel. Military and civilian personnel should be encouraged to learn and apply environmental laws and directives and be required to report instances of noncompliance.

1306 NOTICES OF VIOLATION AND ENVIRONMENTAL LITIGATION

Notices of violation (NOV) or notices of noncompliance (NON) are issued by pollution abatement authorities for discrepancies. Because such notices may lead to penalties and environmental litigation, they cannot be ignored. Such notices shall be processed in accordance with OPNAVINST 5090.1 (series) and MCO P5090.2 (series). Process received in connection with litigation filed or to be filed in State or Federal court shall be processed in accordance with SECNAVINST 5820.8 (series) and Chapter VI of this Manual.

1307 COMPLIANCE

a. Generally. Naval compliance depends on an understanding of the laws and regulations as they affect the particular activity, on monitoring environmental emissions, on identification and correction of deficiencies, and on compliance with procedural requirements. Discussion of the various Federal statutes and regulations are below at section 1308 through 1311.

b. Permits and fees. Congress has provided in most environmental laws that Federal facilities will be subject to State and local permit issuance requirements and to payment of reasonable service charges or fees related to the administration of State and local environmental requirements. Service charges related to the Clean Water Act, Clean Air Act, hazardous materials management, hazardous waste storage and disposal, and underground storage tanks are among the types of charges that may be billed to an installation. Congress has generally not provided for the payment of taxes by Federal installations or activities to State and local governments. (The notable exception is the Low-Level Radioactive Waste Policy Act.) Therefore, it becomes important to distinguish between those charges that are fees and those that are actually taxes, before payment is made. Disbursing authorities should consult with counsel when a fee or service charge is first presented. Final positions on the legality of new fees will be formulated in consultation with the Department of Justice (DOJ) at the headquarters level in appropriate cases.

c. Fees vs. taxes. In general, fees will be examined to determine whether: (1) the charge in question is imposed on all regulated entities without discrimination; (2) the charge is a fair approximation of the costs to the State or local authority implementing the program at the Federal activity; or (3) revenues from the service charge only fund the administrative costs of the associated program. Negative answers to any of these inquiries suggest that the charge is a tax rather than a fee or service charge, and the Navy may

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wish to contest it. Installations and activities questioning a charge should make it clear to the authority demanding payment that delay for review is not a reflection of Navy resistance to regulatory action, but is necessary because of legal issues that must be resolved before payment may lawfully be made. If any regulatory agency imposes a charge that is believed to be a tax on an environmental permit needed for lawful operation of a facility, the situation should be immediately reported to the Chief of Naval Operations (N-45) or the Commandant of the Marine Corps (MC-LFL-7), as appropriate, and the Comptroller of the Navy.

d. Citations and fines. Not all federal environmental statutes provide for a waiver of sovereign immunity. Any citation by a regulatory agency for an alleged violation of any substantive or administrative requirement or any attempt to levy a fine against a Department of the Navy facility should be reported immediately. See section 1306.

e. Funding. Generally, activities fund routine, recurring requirements for environmental compliance. Funding for cleanup of hazardous wastes, however, may come from the Defense Environmental Restoration Account (DERA). DERA is a separate, centralized account to fund cleanup of past hazardous waste dumpsites. OPNAVINST 5090.1 (series) provides additional guidance.

1308 PROCEDURAL/PLANNING STATUTES

a. National Environmental Policy Act. The principal Federal environmental planning statute is the National Environmental Policy Act (NEPA). NEPA is implemented by regulations issued by the Counsel on Environmental Quality (CEQ).

(1) Environmental impact statement. NEPA requires commanders to prepare an environmental impact statement (EIS) for all "major Federal actions significantly affecting the quality of the human environment." Although NEPA most frequently applies to military construction projects, the EIS process can apply to operational activities as well.

(2) Consideration of environmental effects. Commanders must consider the environmental effects of Navy actions from initial planning through implementation. Failure to adequately assess the potential environmental impact of proposed actions may result in significant delays or cancellation of activities or projects. An adverse environmental impact does not automatically preclude the project so long as a thorough assessment has been made.

b. Coastal Zone Management Act. The Coastal Zone Management Act (CZMA) permits a State with a federally approved coastal management law to review proposed Federal actions affecting, directly or indirectly, the coastal zone and evaluate the Navy's determination that the proposed action is consistent to the maximum extent practicable with policies of the State's coastal management plan approved by the National Oceanic and Atmospheric Administration. Often, the CZMA "consistency determination" is based upon factual material in an environmental assessment/EIS.

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c. Executive Order 12114. EO 12114, "Environmental Effects Abroad of Major Federal Actions," requires environmental analysis of major Federal actions overseas having potentially significant environmental effects. Such analysis may result in the preparation of an overseas environmental assessment (OEA) or overseas environmental impact statement (OEIS). Activities which trigger both the requirements of NEPA and EO 12114 are often covered by a joint planning document (e.g., EIS/OEIS).

1309 POLLUTION CONTROL AND ABATEMENT STATUTES

a. Clean Air Act. The Clean Air Act (CAA) requires establishing ambient air quality standards and developing Federal and State programs to achieve those standards by controlling air pollution sources. CAA provides for the individual States to assume control of these programs.

(1) Almost every State has implemented the CAA through a State Implementation Plan (SIP), and most SIP enforcement is done by the States. Federal activities and installations generally must comply with the SIP's requirements.

(2) Commanders whose units produce significant air emissions should expect inspections by Federal or State agencies. These agencies may issue an NOV for discrepancies, including monetary civil penalties. NOV's should be reported in accordance with applicable instructions.

b. Federal Water Pollution Control Act. The Federal Water Pollution Control Act (FWPCA) promotes improving the nation's surface water resources. It provides for developing municipal and industrial wastewater treatment standards and a permit system to control wastewater discharges into the surface waters of the United States. The FWPCA, often referred to as the Clean Water Act (CWA), was initially implemented by a Federal permit system, but significant amendments in 1987 increased State involvement.

(1) Commands are responsible for significant record-keeping requirements. States may conduct inspections and issue an NON when Federal or State permits are violated.

(2) States define discharges. The definition may include wastewater from pipes, ditches, drains, or even "run-off."

c. Resource Conservation and Recovery Act. The Resource Conservation and Recovery Act (RCRA), also known as the Solid Waste Disposal Act (SWDA), regulates land disposal of solid waste. RCRA has gradually become the Environmental Protection Agency's (EPA) principal tool for regulating hazardous and toxic waste.

(1) Under EPA implementing regulations, many solvents, lubricants, and other common chemicals become toxic/hazardous waste when they are disposed of or stored after initial use.

(2) NOV's, similar to those issued under the CWA, are the most common enforcement method.

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d. Safe Drinking Water Act. The Safe Drinking Water Act (Subchapter XII of the Public Health Service Act) establishes standards for water distribution systems and protects surface and underground sources of drinking water. The standards implemented by EPA and state regulations apply to all Naval activities.

e. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA is directed at abandoned or financially insolvent "hazardous waste sites." These sites, commonly referred to as Superfund sites, are identified for clean up on a National Priority List (NPL). Sites located on former and active Navy and Marine Corps shore activities are covered by the Installation Restoration Program (IRP). CERCLA also establishes a requirement for immediate notification of the unpermitted release (land), discharge (water), or emission (air) of designated hazardous substances.

f. Ocean Dumping Act. The Ocean Dumping Act, also known as the Marine Protection, Research, and Sanctuaries Act (MPRSA), prohibits transportation for the purpose of dumping material in the territorial sea and seaward without a permit, but excludes sewage from vessels and effluent from motor-driven equipment on vessels. The MPRSA is administered by EPA. EPA regulations, implementing both the statute and certain international agreements, specifically restrict the type of materials that may be transported for disposal of at sea. Department of the Navy regulations also set forth requirements and/or limitations on the disposal of various materials at sea.

1310 STATUTES CONTROLLING SPECIFIC SUBSTANCES

a. Toxic Substances Control Act. The Toxic Substances Control Act (TOSCA) regulates substances that pose "an unreasonable risk of injury to health or the environment." Under TOSCA, EPA regulates the manufacture, distribution, storage, and disposal of only asbestos and Polychlorinated Biphenyls (PCB).

b. Federal Insecticide, Fungicide, and Rodenticide Act. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates most industrial uses of covered agents, including the unlawful disposal of insecticides.

c. Marine Plastic Pollution Research and Control Act. The Marine Plastic Pollution Research and Control Act, implements the International Convention on the Prevention of Marine Pollution (MARPOL Convention), and will eventually preclude marine disposal of all plastics by seagoing naval units. Fleet directives have been issued to comply with the statutory deadline.

d. Medical Waste Tracking Act. The Medical Waste Tracking Act (Subtitle J of RCRA) requires naval activities within participating States to maintain records from "generation" to "disposal" on the handling of all "medical waste," as defined by EPA, and to comply with State requirements for managing disposal of medical wastes.

e. United States Public Vessel Medical Waste Anti-Dumping Act of 1988. This law prohibits the dumping of potentially infectious medical wastes into ocean waters, unless the health or safety of individuals on board is threatened, or during time of war or declared national emergency. When

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disposal is authorized under one of these two exceptions, it must be disposed of beyond 50 nautical miles from the nearest land. Additionally, for surface public vessels, the medical waste must be sterilized, properly packaged, and sufficiently weighted to prevent waste from coming ashore after disposal; for submersible public vessels, the waste must be properly packaged and sufficiently weighted to prevent the waste from coming ashore. OPNAVINST 5090.1 (series), fleet directives, and medical guidance should be consulted before any medical wastes are disposed of at sea.

1311 STATUTES PROTECTING ANIMALS AND HISTORIC PLACES

a. Endangered Species Act. The Endangered Species Act (ESA) protects animals listed as "endangered" or "threatened" and their habitats. The ESA is primarily enforced by criminal sanctions.

b. Marine Mammal Protection Act. The Marine Mammal Protection Act (MMPA) protects marine mammals from harassment, injury, or death. The statute is administered by National Marine Fisheries Service, which has the authority to authorize the "taking" of marine mammals through an authorization process.

c. National Historic Preservation Act. The National Historic Preservation Act (NHPA) attempts to preserve places listed or eligible for listing on the National Register of Historic Places. NHPA covers the entire United States, its territories, and its possessions. It is implemented by a review process involving the "State Historic Preservation Officer" (SHPO) for the State concerned and the Advisory Council on Historic Preservation. Commanders should consider the historic value of any place significantly affected by Naval activities and ensure that the NHPA is observed.

1312 ENVIRONMENTAL COMPLIANCE IN THE FEDERAL WORK PLACE

The Occupational Safety and Health Act (OSHA), as implemented by specific directives, requires the Navy establish and maintain a comprehensive safety and health program for civilian and military personnel. Commanders should ensure an aggressive and comprehensive occupational health and safety program for their units.

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SELECTED REFERENCES

Department of Defense
- DODD 1000.3, Safety and Occupational Health Policy
- DODD 5030.41, Oil and Hazardous Substances Pollution Prevention and Contingency Program
- DODI 6055.1, Department of Defense Safety and Occupational Health (SOH) Program

Secretary of the Navy Instructions
- SECNAVINST 5100.10 (series), Department of the Navy Policy for Safety, Mishap Prevention, Occupational Health and Fire Protection Programs

Chief of Naval Operations Instructions
- OPNAVINST 5090.1 (series), Environmental and Natural Resources Protection Manual
- OPNAVINST 5100.8 (series), Navy Safety and Occupational Health Program
- OPNAVINST 5100.23 (series), Navy Occupational Safety and Health (NAVOSH) Manual

Marine Corps Instructions
- MCO P11000.8 (series), Vol. V, Real Property Facilities Manual
- MCO P5090.2 (series), Environmental Compliance and Protection Manual

United States Code
- Clean Air Act, 42 U.S.C. §§ 7401-7642
- Clean Water Act, 33 U.S.C. §§ 1251-1387
- Coastal Zone Management Act, 16 U.S.C. §§ 1451-1464
- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675
- Emergency Planning and Community Right to Know Act, 7 U.S.C. §§ 11001-11050
- Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y
- National Environmental Policy Act, 42 U.S.C. §§ 4321-4370a
- Ocean Dumping Act, 33 U.S.C. §§ 1301-1445
- Resource Conservation and Recovery Act, 42 U.S.C. §§ 69001-6991i
- Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-11
- Toxic Substances Control Act, 15 U.S.C. §§ 2601-2654

Executive Orders
- Executive Order 12088, Federal Compliance with Pollution Control Standards
- Executive Order 12114, Environmental Effects Abroad of Major Federal Actions

Code of Federal Regulations
- 32 CFR § 775, Procedures for Implementing the National Environmental Policy Act

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CHAPTER XIV

PAYMENTS DUE MENTALLY INCOMPETENT MEMBERS, PHYSICAL EXAMINATIONS OF SUCH MEMBERS, AND TRUSTEE DESIGNATIONS

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CHAPTER XIV

PAYMENTS DUE MENTALLY INCOMPETENT MEMBERS, PHYSICAL EXAMINATIONS OF SUCH MEMBERS, AND TRUSTEE DESIGNATIONS

1401 PURPOSE

Each year hundreds of service members become mentally incompetent due to injury or disease. Members determined unfit for duty because of mental incompetence will be processed for placement on the Permanent Disability Retirement List (PDRL), Temporary Disability Retired List (TDRL), or discharged. Disposing of the member's pay is an immediate issue confronting commanding officers, especially if the member has dependents. This chapter explains how to appoint trustees to receive the incompetent member's pay for the benefit of the member and dependents, as well as how to obtain emergency funds pending the appointment of a trustee. Since the Defense Finance and Accounting Service (DFAS) has assumed full responsibility for guardian matters, this chapter is provided for informational purposes only.

1402 SCOPE

a. The Secretary of the Navy has authority to designate a trustee in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a State court of competent jurisdiction. Subsections 601-604 of 37 U.S.C. This authority is exercised by the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), who has delegated it to DFAS-CL, Office of Continuing Government Activity (DFAS-CL(CGA)(phone 216-204-4426). Trustees receive the active duty pay and allowances, amounts due for accrued or accumulated leave, and retired pay or retainer pay, that are otherwise payable to a member found by competent medical authority to be mentally incapable of managing his affairs.

b. "Member" as used in this chapter refers to:

(1) Members of the Navy or Marine Corps on active duty (other than for training) or on the retired list of the Navy or Marine Corps; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

1403 AUTHORITY TO APPOINT TRUSTEES

DFAS-CL(CGA) is authorized to act for the Secretary of the Navy to appoint trustees to receive and administer Federal monies for members and to carry out the provisions of this chapter.

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1404 PROCEDURES

a. Competency Board

(1) The commanding officer of the cognizant Naval medical facility will convene a board of not less than three medical officers or physicians, one of whom will be a psychiatrist, when there is evidence that a member may be incapable of handling his financial affairs. The board will be convened in accordance with Chapter 18, Manual of the Medical Department (MANMED). The board may include members of the Reserve components on active or inactive duty. When active duty Navy or Marine Corps members are hospitalized in non-Naval medical facilities, the Military Medical Support Office will ensure compliance with Chapter 18, MANMED.

(2) DFAS-CL(CGA) may request the commanding officer of any Naval medical facility, or request the commanding officer of another service medical facility or administrator of a Department of Veterans Affairs medical facility, convene a competency board in accordance with this section to determine the mental capability of a member to manage his financial affairs.

(3) A finding of restoration of competency or capability to manage personal and financial affairs may be accomplished in the same manner specified in Chapter 18, MANMED, except that the board may consist of one or two medical officers or physicians, one of whom must be a psychiatrist.

(4) At least one officer on the competency board, preferably the psychiatrist, will personally observe the member and ensure that the member's medical record, particularly that portion concerning his mental health, is accurate and complete.

(5) The requirement to convene a competency board under this chapter is in addition to and separate from the medical board procedures. Each board member signs the report of the board and certifies whether the member is or is not mentally capable of managing his financial affairs. After approval by the convening authority, the original board report is forwarded to DFAS-CL(CGA).

b. Records. The convening authority will forward the original of each board report to the Defense Finance and Accounting Service-Cleveland Center, Office of Continuing Government Activity (Code CGA), Post Office Box 998021, Room 2323, Cleveland, OH 44199-9980216. If a member is found to be not mentally capable of managing his financial affairs, the forwarding endorsement will set forth the name, relationship, address, and telephone number(s) of the member's next of kin, and any other information that will assist to identify a prospective trustee.

1405 PROCEDURES FOR DESIGNATION OF A TRUSTEE

Upon receipt of a report of a competency board that a member has been found mentally incapable of managing his financial affairs, DFAS-CL(CGA) will initiate action to appoint a trustee, provided no notice of appointment of a committee, guardian, or other legal representative by a State court of

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competent jurisdiction has been received by DFAS-CL(CGA).

1406 TRAVEL ORDERS

The Chief of Naval Personnel or the Director, Personnel Management Division, Headquarters, Marine Corps, may issue travel orders to a member to appear before a competency board convened to determine whether the member is mentally capable of managing his financial affairs. In the case of permanently retired members, travel will be at no cost to the Government.

1407 STATUS OF PAY ACCOUNT

a. Upon notification by the commanding officer of the medical facility preparing the board report that a member has been declared mentally incapable of managing his financial affairs, DFAS-CL(CGA) will suspend the member's pay. Thereafter, DFAS-CL(CGA) or his designee will direct payment of monies to:

(1) The appointed trustee;

(2) The legal representative appointed by a State court of competent jurisdiction; or

(3) Directly to the member following a determination the member is capable of managing his financial affairs.

1408 EMERGENCY FUNDS AND HEALTH AND COMFORT

Until a trustee is appointed, DFAS-CL(CGA) may appoint the member's designated next of kin to receive emergency funds equal to, but not to exceed the amount of pay due the incompetent member for a period of one month. These funds will be deducted from the member's pay account and will be used for the benefit of the member and any legal dependents.

1409 REPORTS AND SUPERVISION OF TRUSTEES

a. Accounting reports. The trustee designated by DFAS-CL(CGA) will submit accounting reports annually or at such other times as DFAS-CL(CGA) or his designee directs. DFAS-CL(CGA) will provide forms to be used by trustees for the required accounting report. The report will account for all funds received from the Navy or Marine Corps on behalf of the member. When payments to a trustee are terminated for any reason, the trustee will submit a final accounting report to DFAS-CL(CGA). Upon approval of the final accounting report, the trustee and the surety will be discharged from liability.

b. Failure to submit a report and default. If an accounting report is not received by the date designated by DFAS-CL(CGA) or an accounting is unsatisfactory, DFAS-CL(CGA) will notify the trustee in writing. If a satisfactory accounting is not received by DFAS-CL(CGA) within the time

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specified, the trustee will be declared in default of the trustee agreement and will be liable for all unaccounted trustee funds. If a trustee is declared in default of the trustee agreement, DFAS-CL(CGA) will terminate payments to the trustee and, if necessary, a successor trustee may be appointed. The trustee and surety will be notified in writing by DFAS-CL(CGA) of the declaration of default. The notification will state the reasons for default, the amount of indebtedness to the Government, and will demand payment for the full amount of indebtedness. If payment in full is not received by DFAS-CL(CGA) within an appropriate period of time from notification of default, the account may be forwarded to the Department of Justice for recovery of funds through appropriate civil action.

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SUMMARY OF JAGINST 5800.7E CHANGES

TABLE OF CONTENTS

1. Updates applicable sections.

CHAPTER I

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0104b. Revised to clarify that it is illegal for anyone, not just an officer or noncommissioned/petty officer, to deny a subordinate normal liberty as punishment for an offense except as specifically authorized under the UCMJ. Adds language to make clear that taking action which has the effect of denying a subordinate normal liberty, e.g., seizing an individual's military ID card, can be considered the same as denying the subordinate normal liberty.

3. Section 0105b(3). Revised to allow individuals in addition to the commanding officer of a member to use the facts underlying a nonpunitive letter to support a detachment for cause proceeding, for relief of command, or to support a negative endorsement.

4. Section 0106a. Expands definitions of "commander" and "commanding officer" for purposes of nonjudicial punishment.

5. Section 0106b. Expands definition of "officer in charge" for purposes of nonjudicial punishment.

6. Section 0107a(1). New language makes clear that all members of units responsible to a superior commander are "of the command" of the superior commander and thus are subject to the nonjudicial punishment authority of the superior commander.

7. Section 0108a. Revised language states that commanding officers or officers in charge of units attached to a Navy ship for duty "will," as opposed to "should," refrain from exercising nonjudicial punishment powers unless permitted by the commanding officer of the ship.

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8. Section 0108c. Additional language defines the term "attached to or embarked in a vessel" as it relates to the right to demand trial by court-martial and provides further guidance on this subject.

9. Section 0109d(3). Additional language provides that telephone communications between an accused and a civilian lawyer is sufficient to satisfy the requirement that the accused have the opportunity to consult with a lawyer before deciding whether to accept captain's mast/office hours.

10. Section 0110c. Revised language states that accused may request to confer privately with the nonjudicial punishment authority, where previously the language indicated that the accused had a right to confer privately.

11. Section 0110d. Language is added to allow the nonjudicial punishment authority to impose nonjudicial punishment through telephone, video conference, or similar remote means under certain circumstances.

12. Section 0111c. Revised language adds the requirement that an accused be attached to or embarked in a vessel in order to receive the punishment of bread and water or diminished rations.

13. Section 0111e. New language prohibits commanding officers and officers in charge serving in grades W-1 through CWO-5 from reducing the grade of enlisted personnel.

14. Section 0112b. Substitutes "hardship duty pay" for "foreign duty pay" as type of pay subject to forfeiture.

15. Section 0113a. Revised language makes clear that forfeiture of pay and reduction in grade take effect when imposed at the nonjudicial punishment proceedings.

16. Section 0113c. Revised language makes clear that a punitive letter is imposed when announced to the offender.

17. Section 0114c. Deletes requirement that punitive censure issued to enlisted personnel in execution of a court-martial must be in writing because section deals with nonjudicial punishment; however, requirement remains in section 0152b(1) that all reprimands issued in execution of court-martial sentences be in writing.

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18. Section 0114j. New language states specifically that commanding officers shall not issue public reprimands.

19. Section 0116a(1). New language provides that when a punitive letter is imposed as nonjudicial punishment, the 5 working-day period to appeal starts running when the accused receives the letter.

20. Section 0117c(3). New language provides that in a multiservice command or unit, where the officer who imposed nonjudicial punishment and that officer's immediate superior in command (ISIC) are from the naval service, and the ISIC has general court-martial convening authority, the appeal authority shall be that ISIC.

21. Section 0118c. Deletes former language that allowed running of probationary period to resume after an interruption.

22. Section 0120. Deletes and adds general court-martial convening authorities.

23. Section 0121e. Deletes former section on procedure for requesting convening authority limited to summary courts-martial. Renumbered current section adds requirements for requesting court-martial convening authority.

24. Section 0122a. Adds language to specify that the authority to convene general courts-martial, as well as special and summary courts-martial, may be restricted by a superior commander.

25. Section 0122b. Revised language states that a commanding officer or officer in charge of a unit attached to a Navy ship for duty therein "will," as opposed to "should," refrain from exercising court-martial convening powers, referring all such matters to the commanding officer of the ship for disposition.

26. Section 0123c. The word "pretrial" is added twice to this section to specify that the required authorization of the Secretary of the Navy, prior to confinement of persons amenable to trial by court-martial under specifically listed provisions, applies only to pretrial confinement.

27. Section 0124c. Revised procedures give general court-martial convening authorities the ability to permit court-

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martial and nonjudicial punishment proceedings in cases that have already been tried in domestic or foreign criminal courts, with notification to the Office of the Judge Advocate General (OJAG) (Code 20). Previously, permission of the Judge Advocate General was required in these cases before convening general or special courts-martial.

28. Section 0126d. New language emphasizes that 72-hour reports in national security cases shall be viewed as a continuing duty to report as details regarding possible lost or compromised information are received by the commanding officer.

29. Section 0126f. New language allows competent authority to direct commands authorized to initially dispose of national security cases to take action other than forwarding national security cases to a National Security Case Disposition Authority (NSCDA). Revises list of NSCDAs.

30. Section 0126h. New language makes clear that the responsible authority shall notify OJAG (Code 17) in all cases where a possible violation of criminal law involves classified information, regardless of any other reporting requirements.

31. Section 0126i. New section adds reporting requirements for NSCDA in potential national security cases.

32. Section 0127d. Revises language relating to general court-martial convening authority's appointment of initial review officers in pretrial confinement cases.

33. Section 0131b(4)(d). Revised language changes geographic limitations in definition of whether counsel is "reasonably available" to serve as individual military counsel.

34. Section 0131b(4)(e). Revised language provides a Naval Legal Service Office (RLSO) commanding officer with greater discretion to make himself or personnel serving as an executive officer or as an officer in charge available to serve as individual military counsel.

35. Section 0135. Added language authorizing the military judge to order the use of audiovisual technology, such as video-teleconferencing technology, among the parties and the judge for purposes of Article 39(a), UCMJ, sessions. This change effects Executive Order 13430 of April 18, 2007.

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36. Section 0136. Deletes language limiting use of delegation authority to excuse court-martial members.

37. Section 0137c. Deletes language relating to accused in national security case offering to plead guilty.

38. Section 0140. New language specifies that OJAG Code 17 should be via addressee when sending report to Department of Justice on testimony of Attorney General-immunized witness in national security cases. Deletes former section 0140b, which required that a verbatim transcript of an immunized witness's testimony be sent to the Judge Advocate General and limited the government's ability to use the witness's testimony against him in a future criminal case.

39. Section 0142. Significant revision on information pertaining to military justice matters and accused persons that may be released or disseminated, with distinction between that which may be proactively put forth (e.g., public dockets), and that which generally can and cannot be released in response to a specific request.

40. Section 0143b. Revises guidance relating to allowing spectators to attend Article 32, UCMJ, proceedings.

41. Section 0146l(1). Revises guidance relating to overseas convening authorities fixing the compensation of expert witnesses.

42. Section 0147. Revises guidance relating to issuing warrants of attachment.

43. Section 0148. Adds and deletes court-martial forms. Identifies Web site from which court-martial forms may be obtained.

44. Section 0150a. Revises language authorizes trial counsel to authenticate the record of trial in certain non-BCD special courts-martial.

45. Section 0151a. Revises language relating to initial review and action by the convening authority, requiring action not more than 120 days after adjournment of the court-martial.

46. Section 0153b and c. Revises language relating to forwarding courts-martial in cases in which the accused has

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waived appellate review under R.C.M. 1110 or in which the accused does not waive appellate review and the sentence as approved extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or longer.

47. Section 0154b and c. Revises language relating to authentication and filing of court-martial records.

48. Section 0154d. Revises language regarding handling of record of trial containing classified information.

49. Section 0155e(3)(g). Adds a required addressee for promulgating orders.

50. Section 0159d. Substitutes Navy-Marine Corps Appellate Leave Activity for Naval Station, Norfolk, VA, as officer with limited authority to remit and suspend sentences.

51. Section 0162b. Revises language to specifically state that the JAG may summarily reject an application for Article 69(b), UCMJ, relief if the applicant does not meet the stated time limitations.

52. Section 0164b. Revises language relating to sending Navy-Marine Corps Court of Criminal Appeals (NMCCA) promulgation package to the accused.

53. Section 0172. Updates cross-references to Secretarial or JAG regulations implementing the Manual for Courts-Martial.

54. A-1-c and A-1-d. Language is added advising the accused that, regardless of whether he accepts or refuses nonjudicial punishment, he could be processed for administrative separation based on his misconduct.

55. A-1-h. The memorandum of pretrial agreement is completely revised to reflect the new standard pretrial agreement provisions and multiple provision options for both part I and II.

56. A-1-j. Adds another required item of information on collection of a DNA sample from the accused to the Report of Results of Trial format.

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SUMMARY OF JAGINST 5800.7E CHANGES

57. A-1-l. Deletes requirement for officer witnessing Request for Immediate Execution of Discharge to provide Social Security number.

CHAPTER II

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0201. Adds language clarifying that the term "commander" generally refers to both commanding officers and officers in charge.

3. Section 0202. Adds language that guidance for investigations can be obtained from judge advocates or specified OJAG codes.

4. Section 0203. Revises language to indicate that normally a commander will direct a preliminary inquiry in writing by an appointing order and will document the outcome in writing.

5. Section 0204a. Adds language stating that, after considering the results of a preliminary inquiry, a commander should consult a cognizant judge advocate to obtain legal advice on how to proceed.

6. Section 0204b and c. Revises language on the options commanders can take and factors to consider upon conclusion of the preliminary inquiry.

7. Section 0208b. Removed major incidents from the list of use limitations for command investigations.

8. Section 0208d(1). Changes language to state that a command investigation convening order "should," instead of "may," direct the investigating officer to seek the assistance of a judge advocate.

9. Section 0209d(1). Revises language to state that opinions and recommendations will be included in a litigation report only if directed by the supervising judge advocate.

10. Section 0222c. Revises definition of "active duty" for death cases.

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11. Section 0236a. Subsection added to reflect a change in the law that expanded SBP benefits for inactive duty training deaths.

12. Section 0242c. Adds language directing certain facts be included in all command investigations and litigation reports concerning motor vehicle accidents, and directing that certain opinions be included in all command investigations but only be included in litigation reports if directed by the supervising judge advocate.

13. Section 0246b. Deleted original subsection b concerning command investigations of collisions and allisions.

14. Section 0249h(3). Adds section requiring that reports of investigations involving fraud of public funds, waste, inefficiency, and related improprieties be forwarded to the Office of the Navy Inspector General.

15. Section 0250e. Revises language concerning the choice of JAGMAN investigative method when dealing with incidents giving rise to claims for or against the Government or deaths of active duty personnel.

16. Section 0250e(14)-(16). Adds language requiring consultation with a judge advocate before including certain opinions in an investigation report.

CHAPTER III

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0302b(1)(a). Adds language clarifying that a complainant is not required to seek redress in writing prior to submitting an Article 1150 complaint.

3. Section 0303a. Revises definition of "complaint of wrongs." The definition no longer requires that the member sought, and was denied, redress.

4. Section 0303f. Revises definition of "wrong."

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5. Section 0304a(6)(d). Adds "fitness report or evaluation review processes" to the list of actions/procedures that are not proper subjects of a complaint of wrongs because they may be redressed under other department procedures.

6. Section 0305b. Adds language indicating that a complaint must be against a specific person, and not against a command or position.

7. Section 0305c(2). Revises language to simplify the explanation of where the complaint must be forwarded in the case where the complainant, respondent, or both, detach prior to the submission of a complaint.

8. Section 0306. Entire section reorganized in more chronological order of processing complaints of wrong.

9. Section 0306a. Revises language regarding the requirement that a complainant request his superior redress the wrong before submitting an Article 138, UCMJ, complaint, clarifying such a request for redress is not required for an Article 1150 compliant.

10. Section 0306f. Adds section explaining the procedural requirements for the respondent.

11. Section 0307. Entire section reorganized in more chronological order of general court-martial convening authority's (GCMCA) review of a complaint of wrong.

12. Section 0307e. Revises language regarding the GCMCA's notification requirements and the complainant's responsibilities when submitting a rebuttal. Instead of requiring the GCMCA to forward to the complainant any "adverse" evidence developed by the GCMCA's inquiry, revised language specifically states that the GCMCA will forward to complainant "any evidence developed by the GCMCA's inquiry."

13. Section 0307f. New section changes time limitation for GCMCA to act on complaint from 60 days to 90 days.

14. Section 0307g. Revises time limitation on delay due to a separate inquiry or proceeding which is reasonably likely to clarify the issues from 90 days to 120 days.

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15. Section 0307h. Revised language requires that both the GCMCA report to the Secretary of the Navy (SECNAV) and response to the complainant be signed personally by the GCMCA.

16. Section 0307i. Adds language stating that in the circumstance where a complaint has merit, but redress is unavailable, the GCMCA should acknowledge the merit of the complaint.

17. Section 0309j. Adds requirement for GCMCA to include any pertinent investigations with the report to SECNAV.

18. Section 0309a(2). Establishes 120-day time limit for the Judge Advocate General to forward the complaint package with analysis to the Secretary of the Navy.

19. Section 0310d. Revises language regarding SECNAV's notification to complainant of the final action taken on the complaint and the administrative finality of that action.

20. Section 0311. Additional section regarding procedures for the SECNAV final review of formal equal employment opportunity and sexual harassment complaints, when requested.

21. A-3-a. Revises complaint of wrong form to comply with Navy Correspondence Manual letter format.

CHAPTER IV

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0405e. Adds language to clarify that the judge advocate's review of an Article 139, UCMJ, claim will be taken into consideration but is not binding on the commanding officer when determining liability.

3. Section 0405f. Adds requirement that prior to forwarding to the commanding officer any Article 139 claim investigation in which a recommendation of pecuniary liability is made, the investigating officer will forward a copy of the investigation to the member who has been assessed pecuniary liability. The member will have 20 days to submit a statement or additional

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information through the investigating officer to the commanding officer.

4. Section 0406. Makes substantial revisions to the language regarding the commanding officer's and the GCMCA's responsibilities for processing Article 139 claims where the offenders are members of the same command.

5. Section 0407. Deletes much of the direction regarding the commanding officer's and the GCMCA's responsibilities for processing Article 139 claims where the offenders are members of different commands, that was already stated in section 0406.

6. Section 0408. This revision makes significant changes to the language concerning reconsideration and appeal of decisions on Article 139 claims.

7. Section 0409. Adds language giving the GCMCA discretion to consider a request for reconsideration of a decision on an Article 139 claim based upon the outcome of a court-martial.

CHAPTER V

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter. In addition, sections are renumbered due to deletion of several former sections.

2. Former section 0503. Deleted. Provided background information describing the Freedom of Information Act's (FOIA) public disclosure requirements that can be found in the applicable references.

3. Section 0503d (Former Section 504d). Adds language indicating that generally, Initial Denial Authorities (IDAs) are GCMCAs.

4. Section 0504b(4) (Former Section 505b). Adds language stating that the nine categories of records exempt from release under FOIA are described in the applicable SECNAV instruction. Advises commands to consult the IDA or their legal advisor if they believe requested documents may be exempt.

5. Former sections 0506 and 0507. Deleted. The information in these former sections, which explained the FOIA exemptions

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and discussed how to balance privacy interests against the public's interest in disclosure of government information, is more completely covered in other references.

6. Section 0505 (Former Section 508). Revised language provides greater protection from disclosure for lists of names and duty addresses. Deletes previous language stating that pre-published personnel directories and organizational charts must be released.

7. Section 0506 (Former Section 509). Adds language stating that commands should consult their legal advisor and public affairs officer when they receive a FOIA request for information relating to nonjudicial punishment in a newsworthy case or in the case of a senior official abusing the public trust through office-related misconduct such as embezzlement, fraud, or misuse of Government property.

8. Section 0508 (Former Section 511). Deletes language describing the procedures for denying a FOIA request because it duplicates information found in greater detail in the applicable SECNAV instruction.

9. Former section 0514. Deleted. Background information on the Privacy Act was duplicative of information in other references, including the applicable SECNAV Instruction.

10. Section 0512 (Former Section 516). The language is revised to reflect current Department of the Navy responsibilities for implementation of the Privacy Act.

11. Sections 0513 (Former Section 517). Revises language throughout relating to procedures for responding to Privacy Act requests, adding a new section on protecting personally identifying information.

12. Section 0514 (Former Section 518). Deletes language describing exceptions to the general rule that records in a system of records may not be disclosed except pursuant to a request or with the prior consent of the subject of the record. Refers reader to the applicable SECNAV instruction.

13. Section 0516 (Former Section 520). Adds language stating that a Privacy Act statement supplied to an individual who is providing personal information must contain a statement of the possible effects on the individual if the requested information

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is not provided. Adds language stating that the collection of Social Security numbers is discouraged if another identifier would suffice.

14. Section 0518 (Former Section 522). Adds language stating that a command that receives a request for information for litigation purposes should immediately contact the staff judge advocate in their chain of command.

15. Section 0524 (Former Section 528). Deletes section on release of affirmative claims files.

CHAPTER VI

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0602. Adds language clarifying that the definition of "State" includes the District of Columbia, territories, commonwealths, and all possessions and protectorate of the United States.

3. Section 0605. Revises language to clarify the procedures for the circumstance when the Department of Justice requires the appearance of a member of the Navy or Marine Corps in Federal court.

4. Section 0616c. Language is added in this section to clarify that service members, civilian employees, and their dependents stationed in a foreign country are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which process is issued.

5. Section 0618. Adds language indicating that it is policy of the Department of the Navy to make both service members and civilian employees available to testify on behalf of the United States in federal courts. The section also clarifies language providing guidance to the command on the issuance of additional duty orders, payment of travel expenses, and reimbursement.

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SUMMARY OF JAGINST 5800.7E CHANGES

CHAPTER VII

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0701c. Adds "outreach programs" as among those services provided to service members by the legal assistance program.

3. Section 0706. Adds language that expands the list of persons eligible for legal assistance consistent with federal statute.

4. Section 0707b. Revises language to indicate that information concerning a service member's appointments or meetings with a legal assistance attorney may not be disclosed unless an exception to the attorney-client relationship applies or the client has given informed consent. The language stating that this information will be generally provided to a commanding officer or officer in charge upon request has been deleted.

5. Section 0708. Revises language describing services provided through legal assistance by adding to and expanding the descriptions of the types of legal assistance services that will be provided by topic.

6. Section 0709c. Adds language on the referral procedures when two or more persons with conflicting interests seek advice from the same legal assistance office.

7. Section 0712c. Substantially revised, deleting procedural information about acquiring U.S. citizenship and stating the immigration and naturalization law and policy, subject to frequent changes, will be maintained on Navy Knowledge Online.

CHAPTER VIII

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0802b. Adds language clarifying the appropriate personnel from OJAG Claims and Tort Litigation Division (Code

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15) responsible for processing tort claims, personnel claims, and Medical Care Recovery Act claims.

3. Section 0805c. Adds language stating that the command most directly involved in a claim shall initiate a litigation report investigation.

4. Section 0806. Revises language explaining action required when personnel receive notice of suit.

5. Sections 0809, 0813, and 0817. Revised to state that claims arising in Italy under the Foreign Claims Act will be processed by RLSO, EURSWA, vice U.S. Sending State Office (USSSO) Rome or Navy Legal Service Office (NLSO), EURSWA.

6. Section 0810b. Language is revised to clarify that a claimant need not be an inhabitant of the country in which the claim arose, specifically stating that travelers and tourists are covered by the Foreign Claims Act.

7. Section 0814c. Adds language clarifying the requirements for the processing of claims by the claims investigating officer.

8. Section 0818. Adds language clarifying the procedures for claimant notification, including explaining reasons for denial and how to request reconsideration of a claim.

CHAPTER IX

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 0902a. Adds language explaining the relationship between Federal and State authority to administer oaths and perform notarial acts.

3. Section 0902b and d. Adds language clarifying the persons who have authority to administer oaths and act as a notary.

4. Sections 0904 - 0907. Substantially revised to include general responsibilities of a notary as well as general information and instructions applicable to both Federal and non-Federal notorial acts.

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5. Section 0908 - 0910. Substantially revised to reflect updates in statutory requirements, containing specific references and guidance for all States and territories of the United States.

CHAPTER X

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Former Section 1006 on Foreign Environmental Law has been moved to Chapter XIII, Environmental Protection.

3. Section 1008j (Former Section 1009). New section explaining that the Military Extraterritorial Jurisdiction Act (MEJA) of 2000 expands the criminal jurisdiction of the United States to civilian accompanying U.S. forces overseas.

CHAPTER XI

1. Administrative changes, including updating reference information and deleting outdated references to U.S. Customs regulations, are made throughout the chapter.

2. Section 1101. Adds language to update references to customs regulations and to refer reader to the local Customs Enforcement Office for the most current information because customs regulations change frequently.

3. Section 1102. Adds language clarifying Customs entry requirements and deletes expired contact information.

4. Section 1103. Revisions update pre-clearance requirements.

CHAPTER XII

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter. Sections and subparagraph headings are revised and rearranged throughout the chapter.

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2. Section 1202c. Deletes the Deputy Commander, U.S. Naval Forces Europe; and Commander, Sixth Fleet, as commands that have been delegated limited authority to adjudicate and settle admiralty tort claims arising in their jurisdictions.

3. Section 1207. Adds language mandating the segregation and preservation of all physical evidence, Email, and electronic files associated with an admiralty incident pending guidance from an admiralty attorney.

4. Section 1208a. Adds language to include "Global Positioning System (GPS) data" as data that must be preserved for investigative reports.

5. Parts B, C, and Former Parts D, E. Parts D and E were eliminated. Subsections in all former parts rearranged within chapter.

6. Section 1217. Deletes the subparagraphs on the Secretary's settlement authority and the delegation of that authority.

7. Former Sections 1218 and 1219. Deleted sections on Statute of Limitations for Affirmative Claims and Affirmative Claims Administration.

8. Section 1218. Deletes language on the settlement of salvage claims.

9. Former Section 1221. Deleted section on towage and pilotage.

10. A-12-a, A-12-b, and A-12-c. All have been revised and updated.

CHAPTER XIII

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 1304. Adds language on compliance with host-country environmental standards and access by foreign officials to naval installations, vessels, aircraft, and vehicles to monitor such compliance.

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SUMMARY OF JAGINST 5800.7E CHANGES

3. Section 1308c. Adds language summarizing requirements of Executive Order 12114 on "Environmental Effects Abroad of Major Federal Actions."

4. Section 1309. Adds and moves language from former Section 1311c summarizing the standards of the Safe Water Drinking Act and their application to Naval activities.

5. Section 1311b. Adds language summarizing the Marine Mammal Protection Act.

CHAPTER XIV

1. Administrative changes, including updating references, routing information, and office titles, are made throughout the chapter.

2. Section 1405. Deletes language stating that DFAS-CL(CGA) may request Navy or Marine Corps activities appoint an officer to interview prospective trustees in cases where member has been declared mentally incapable of managing his financial affairs and guidance that the interviewing officer would use in order to determine whether a prospective trustee can obtain an appropriate bond as directed by DFAS.

INDEX

1. Updates applicable sections.

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JAG MANUAL CORRECTION/SUGGESTION SHEET

_____
Date

From: _____

_____

To: Office of the Judge Advocate General, Administrative Law Division (Code 13), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066 **Fax**: (703) 604-6955 (DSN 664-6955)

1. It is requested the following correction(s) be made to the next change of the JAG Manual:

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2. It is requested the following suggestion(s) be included in the next change of the JAG Manual:

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Signature