



UNITED STATES MARINE CORPS

MARINE CORPS BASE

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MCBO P5800.2

C 052/p

9 Aug 90

MARINE CORPS BASE ORDER P5800.2

From: Commanding General
To: Distribution List

Subj: SOP FOR LAW AND LEGAL MATTERS

Ref: (a) Manual for Courts-Martial, 1984 (MCM, 1984)

Encl: (1) LOCATOR SHEET

1. Purpose. To promulgate the SOP for administering law and legal matters.

2. Cancellation. MCCDCO P5800.2.

3. Background

a. The Commanding General, Marine Corps Base (MCB), is the Officer Exercising General Court-Martial Jurisdiction for organizations and tenant activities assigned to the Marine Corps Combat Development Command (MCCDC) and for those organizations outside this Command assigned by higher authority. In that capacity, except as noted in paragraph 3b below, the Commanding General, MCB, will convene all general courts-martial, be the separation authority for administrative separations, and act upon nonjudicial punishment appeals in appropriate cases.

b. The Commanding General, MCCDC will dispose of cases involving national security pursuant to section 0116 of the Manual of the Judge Advocate General. The Commanding General, MCCDC, will also exercise general court-martial jurisdiction in those cases in which the Commanding General, MCB, cannot act as authority.

c. The Staff Judge Advocate (SJA) as senior legal advisor for the Command has, as required by law, direct access to any officer exercising general court-martial jurisdiction. Additionally, the SJA is available to deputy commanders, battalion commanding officers, and other activity heads for advice on legal matters within their organizations.

d. Refer to the reference for the Rules for Courts-Martial (R.C.M).

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4. Recommendations. Recommendations concerning the contents of the SOP for Law and Legal Matters are invited. Such recommendations should be forwarded to the Commanding General, MCCDC (C 052), via the appropriate chain of command.

5. Summary of Revision. This revision contains a substantial number of changes and should be completely reviewed.

6. Certification. Reviewed and approved this date.



C. N. PASTINO
Deputy Commander for Support

DISTRIBUTION: P57

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ENCLOSURE (1)

SOP FOR LAW AND LEGAL MATTERS

RECORD OF CHANGES

Log completed change action as indicated.

| Change Number | Date of Change | Date Entered | Signature of Person Incorporated | Person Chancre |
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SOP FOR LAW AND LEGAL MATTERS

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SOP FOR LAW AND LEGAL MATTERS

CHAPTER 1

GENERAL ADMINISTRATION

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SOP FOR LAW AND LEGAL MATTERS

CHAPTER 1

GENERAL ADMINISTRATION

1000. DISCIPLINE. The maintenance of discipline and the application of corrective and punitive measures provided by law are command responsibilities. Authority in these matters will not be delegated to persons not in command. It is essential to the proper functioning of any command that discipline be administered properly, impartially, and promptly. The organizational commander is responsible to ensure that this is done. Certain requirements concerning proper handling and timely reporting of disciplinary cases are herein provided to aid organizational commanders in their responsibilities.

1001. MAJOR SOURCE MATERIALS. Military justice and its administration are controlled by federal statutes and regulations. The administration of military justice within this Command will be conducted with the Uniform Code of Military Justice (UCMJ); MCM, 1984; JAGINST 5800.7, Manual of the Judge Advocate General (JAG Manual); **MCO P5800.8**, Marine Corps Manual for Legal Administration (LEGADMINMAN); the decision of the United States Court of Military Appeals and the Courts of Military Review; directives of higher authority; and this Manual.

1002. ASSIGNMENT OF LEGAL DUTIES. Each organizational commander who exercises special court-martial convening authority will appoint in writing a commissioned officer or warrant officer to the primary or additional duty of organizational legal officer. A prerequisite to appointment is attendance at the Naval Justice School at Newport, RI, or the equivalent in previous experience. A lack of either is not a bar to assignment, but the officer assigned should be sent to the course as soon as practicable.

1003. INSTRUCTIONS AND TRAINING

1. The proper administration of military justice is the personal responsibility of each person in command. This heavy responsibility can only be discharged properly by providing clear guidance, adequate training, and personal supervision. Organizational commanders and **CO's** must take a personal interest in the correct and prompt discharge of all legal duties.

2. In addition to the instruction of personnel required by UCMJ, Article 137, organizational training schedules will provide for instruction in such subjects as legal assistance; the purpose and scope of the Soldiers and Sailors Civil Relief Act; the Privacy Act of

1974; the Freedom of Information Act; the law of search and seizure; UCMJ, Article 31b, warnings; duties, responsibilities, and conduct of members at courts-martial; the rights of accused at nonjudicial punishment proceedings; and the duties of summary courts-martial officers. The Staff Judge Advocate (SJA) will provide assistance in these areas of instruction if requested.

1004. PROMPT DISPOSITION OF CASES

1. The certainty of prompt punishment is more conducive to good discipline than punishment long delayed after the offense. Reported offenses must be promptly investigated. However, speed in the conduct of the investigation should never be paramount to the rights of the accused or the thoroughness of the investigation. Upon receipt of sworn charges, whatever disposition is to be made must, in the interest of justice and discipline, be made promptly.

2. Disciplinary infractions will be handled expeditiously and judiciously. It is not necessary or desirable that every offender be subjected to court-martial action or have nonjudicial punishment imposed under UCMJ, Article 15. It is only necessary that every known disciplinary infraction and offender receive the considered attention of someone in the chain of command. Each infraction must be dealt with under our regulations and laws with consistency and in proportion to the magnitude of the offense. Due consideration should be given to the offender's age and military record, as well as matters presented in extenuation and mitigation on behalf of the offender.

1005. ORGANIZATION OF THE OFFICE OF THE STAFF JUDGE ADVOCATE (OSJA).

The SJA is the principal legal advisor for the Command. Specific duties of the SJA and principal personnel within the OSJA may be found in MCCDCO P5400.1. The OSJA is organized generally into the following branches with principal duties as listed:

1. Military Justice/Administrative Law Branch. The Military Justice Section's responsibilities include prosecution of special and general courts-martial, providing advice to subordinate commanders relative to administering disciplinary matters, and scheduling and providing instructors for legal courses taught by MCCDC schools and organizations. This section has an officer appointed as Special Assistant U.S. Attorney who conducts prosecutions at the U.S. Magistrates' Court, Alexandria, VA for minor civilian offenses and all serious traffic violations committed aboard MCCDC, and also administers debarment proceedings.

2. Civil Law/Review Branch

a. Civil Law Section. Provides legal advice to staff sections on: the release of information pursuant to the Freedom of Information Act (exclusively for the Public Affairs Office); the propriety of

using command facilities by non-military groups; matters involving labor law, environmental law, standards of conduct, gifts, garnishments, and private organizations; reviews of MCCDC orders and certain contracts; and other miscellaneous matters as assigned. The Civil Law Officer is the SJA representative to the Family Advocacy Committee, which deals with family violence.

b. Review Section. The Review Section's responsibilities include processing of post-trial actions for courts-martial conducted for personnel of this Command and the organizations for which the Commanding General is the officer exercising general court-martial jurisdiction. Other functions include reviewing courts-martial and appeals of nonjudicial punishments.

3. Administrative Support Branch. The Legal Administrative Officer heads the Administrative Support Branch and is a nonlawyer limited duty officer or warrant officer responsible for the administrative operation of the OSJA and certain other functions not involving military justice matters. Specifically, the Legal Administrative Officer formulates operating policies and procedures; supervises and coordinates property inventories and control; procures supplies and equipment; prepares and administers the operating budget and POM documents; supervises the maintenance of the Law Library; advises on the improvement of procedures and practices related to management; reviews all JAG Manual investigations, injury reports, and all claims; instructs in legal matters at various schools; conducts legal inspections for MCCDC units; administers matters pertaining to Table of Organization (T/O), Table of Equipment (T/E), and Table of Authorized Publications (TAP); prepares and maintains statistical data; and handles special projects as assigned. This branch also administers and conducts the MCCDC Traffic Court, which adjudicates minor traffic violations occurring aboard MCCDC, and maintains driving records for personnel located at MCCDC.

4. Defense Counsel Branch. This branch, though operationally within the OSJA, reports to the Regional Defense Counsel, located at Camp Lejeune, NC. The branch receives administrative support from the SJA, and its members are administratively attached to MCCDC. The branch provides representation to Marine Corps and Navy personnel charged at general or special courts-martial or who are respondents at administrative discharge boards, and provides advice to individuals pending charges at nonjudicial punishment, summary courts-martial, or pending administrative separation not requiring a discharge board.

5. Legal Assistance Branch. The Legal Assistance Branch provides legal assistance to active duty and retired personnel and their dependents in those matters not dealing with military justice matters. This includes preparation of wills and powers of attorney, landlord-tenant disputes, domestic relations, consumer law, contract review, estate planning, personal income tax advice, adoptions, name changes, naturalization and immigration **counseling**, and related matters. This branch also coordinates the service of civilian warrants of arrest

and civil process, and the turning over of military personnel to civil authorities pursuant to procedures set forth in the JAG Manual.

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CHAPTER 2

MILITARY JUSTICE - GENERAL

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CHAPTER 2

MILITARY JUSTICE - GENERAL

2000. BASIC POLICIES

1. A person who has been tried in a domestic or foreign court, whether convicted or acquitted, or whose case has been adjudicated by juvenile court authorities, will not be tried by court-martial nor awarded nonjudicial punishment for the same act or acts except as provided for in the Manual of the Judge Advocate General (JAG Manual), section **0116d**.

2. All known charges against an accused, if properly the subject of a court-martial or nonjudicial punishment, should ordinarily be heard at a single proceeding by the lowest forum that has the power to adjudge an appropriate and adequate punishment.

2001. OFFENSE REPORTS. Military personnel should report all offenses committed by members of the naval service which they observe. When a CO or OIC receives notice of such, they will take prompt steps to have the matters investigated and will take any necessary action per Rules for Courts-Martial (R.C.M.) 303. NOTE: Offenses which are major federal offenses or which involve national security require special consideration. See JAG Manual, section 0116.f. In all such cases, contact the Staff Judge Advocate (SJA) immediately.)

2002. PRELIMINARY INQUIRY. A preliminary inquiry conducted per R.C.M. 303 is used to provide sufficient information to enable a proper disposition of the case of suspected offense(s). In the case of a minor incident, a simple, informal inquiry may suffice and submission of an oral report will be appropriate. In a case involving more complex matters, or when a trial by court-martial is anticipated, the preliminary inquiry should be in writing as in figure 2.1. In cases of ongoing investigations, the officer conducting the preliminary inquiry should contact the investigator handling the case and determine the availability of information. A formal investigative report from an investigative agency will normally suffice for the preliminary inquiry. However, the commander should balance the necessity and desirability of the prompt disposition of charges against the time delay sometimes involved in awaiting the final report of an investigating agency. In such cases, the CO should ensure that the SJA or the Military Justice Officer (MJO) is informed of the situation in order to expedite processing.

2003. INVESTIGATIVE SUPPORT

1. In the discharge of the responsibility for good order and discipline, an organizational commander must frequently rely on prompt investigative action by professionally trained personnel. Their support is valuable not only for effective resolution of alleged, suspected, or actual criminal offenses, but also to preserve facts and construct an evidentiary foundation for subsequent Command action.
2. For Naval Investigative Service's jurisdiction and responsibilities, review SECNAVINST 5520.3.
3. The investigation of cases involving the commission of a felony by a civilian aboard Marine Corps Combat Development Command (MCCDC) is governed by SECNAVINST 5820.1.

2004. ACTION BY IMMEDIATE COMMANDING OFFICER. The officer exercising immediate nonjudicial punishment authority, upon receiving information that a member of the Command has committed an offense in violation of the UCMJ, will take one of the following actions (R.C.M. 306), as appropriate, after the preliminary inquiry required by R.C.M. 303.

1. Take no action or dismiss the charges.
2. Take administrative action, to include nonpunitive corrective measures.
3. Impose nonjudicial punishment pursuant to UCMJ, Article 15.
4. Forward the charges to higher authority.

2005. ACTION BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY. Upon receipt of the case and the results of the previously conducted preliminary inquiry, the officer exercising summary court-martial jurisdiction over the accused may:

1. Dispose of the charges without further proceedings.
2. Impose nonjudicial punishment.
3. Refer to trial by summary court-martial.
4. If trial by special or general court-martial is considered appropriate, forward the case and allied papers, together with request for legal services, to the Office of the Staff Judge Advocate (OSJA) per paragraph 4000 of this Manual.

2006. PRETRIAL RESTRAINT

1. The officer considering the pretrial restraint of an individual must resolve three questions per R.C.M. 304:
 - a. First, can the accused permissibly be restrained?
 - b. Second, should the accused be restrained?
 - c. Third, what form of restraint should be applied?
2. The question of whether the individual can be restrained may be resolved by a determination that it is more likely than not that an offense has been committed which is punishable under the UCMJ and that the suspect, a person subject to the UCMJ, is the perpetrator of the offense. Stated differently, is there probable cause to believe that an offense has been committed over which the military has jurisdiction, by a person over whom the military has jurisdiction? An affirmative answer means that the individual can be placed in pretrial restraint of some form. However, it should be noted that UCMJ, Article 10, provides that an accused charged only with an offense tried normally by a summary court-martial should ordinarily not be placed in pretrial confinement. See also SECNAVINST 1640.9, paragraph 7102.
3. The question of whether the individual should be restrained may be resolved by a determination that if the individual is not restrained it is more likely than not that they will not be present at the trial or that the person will engage in serious criminal misconduct. In reaching this determination, the following facts should be considered:
 - a. The nature of the offense charged. (NOTE: The fact that the individual is charged with a serious crime is not in itself sufficient to justify pretrial restraint, but merely a factor to be considered.)
 - b. Prior record of offenses.
 - c. Previous flight or noncompliance with minor forms of restraint while awaiting trial on the present or prior charges.
 - d. Prior service, reputation, character, mental condition, and financial condition.
 - e. Ties to the local community, such as dependents aboard or near MCCDC, and home ownership/other relatively permanent residence in the area (e.g., an apartment full of furniture).
 - f. Statements by the individual concerning their intentions.
4. If it is decided that the individual can and should be restrained, a decision concerning the form of restraint must be made. The least restrictive means to ensure the individual's presence at

trial should be the guiding principle. In making the decision, consideration of alternatives such as restriction of the individual to the Command, battalion area, or barracks is required. The courts have emphasized that the deprivation of an individual's liberty will not be contemplated lightly. They have further emphasized that, when deemed necessary, deprivation of liberty will only be imposed to the degree necessary under the circumstances to accomplish the ends of justice. In this regard, an officer ordering any form of pretrial restraint should record in writing all of the evidence that was considered prior to making the decision to restrain. This information will be provided to the Initial Review Officer and included with the request for legal services. Procedures for ordering pretrial confinement are contained in MCCDCO 1640.1.

2007. SPEEDY TRIAL

1. Under the U.S. Constitution, Amendment VI, the UCMJ, and R.C.M. 707, an accused is guaranteed the right to a speedy trial. For convenience of reference, pertinent parts of UCMJ, Articles 10 and 33, are quoted:

a. Article 10. "When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release **him.**"

b. Article 33. "When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied **papers,** to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for **delay.**"

2. Failure to comply with the aforementioned provisions of the UCMJ could result in dismissal of charges for lack of a speedy trial.

3. The U.S. Court of Military Appeals has held that a presumption of an Article 10 violation will exist when pretrial confinement exceeds three months. R.C.M. 707(d), incorporating this ruling, imposes a **90-day** limitation, which may be extended by the military judge for a **10-day** period upon a showing of extraordinary circumstances. Certain other exclusions from the **90-day** period are enumerated in R.C.M. 707(c). However, a delay beyond 90 days cannot be justified by the mere showing that it was caused by difficulties usually encountered in the processing of charges for trial, such as mistakes in drafting, personnel shortages, illnesses, and leave.

4. In addition to the **90-day** limit for individuals in pretrial confinement, R.C.M. 707(a) also imposes a limit for others not in pretrial confinement. The accused will be brought to trial within 120 days after imposition of any lesser form of pretrial restraint under R.C.M. 304 or notice to the accused of preferred charges under R.C.M. 308, whichever is earlier. The accused will be notified of preferred charges against them as soon as practicable.

5. In **all** cases in which the accused is placed in arrest or pretrial confinement and an investigation has been ordered pursuant to UCMJ, Article 32, strict compliance with UCMJ, Article 33, is essential. Within eight days after the accused is ordered into arrest or confinement, the organizational commander must forward the charges to the Commanding General, Marine Corps Base, together with the investigation and allied papers. If the CO does not forward the charges within the eight-day period, reasons for the delay must be documented and forwarded with the other papers recommending trial by general court-martial. A mere list of dates that varying stages of a case were completed will not satisfy the requirements of UCMJ, Article 33. Rather, a complete chronology containing the reasons for the delay is required.

2008. REPORTS REQUIRED

1. Reports of delivery of personnel to civil authorities, the refusal of delivery, and the results of civil adjudication will be submitted to CMC (JA) via the Commanding General, MCCDC (C 052) pursuant to the JAG Manual, Chapter XIII, Part A. Such reports will be submitted within five working days of action taken.

2. In officer discipline cases, reports will be submitted per **MCO P5800.8**, LEGADMINMAN.

SOP FOR LAW AND LEGAL MATTERS

(ORGANIZATION HEADING)

5800
(Originator's Code)
(Date)

From: (Preliminary Inquiry Officer)
To: (Commanding Officer (Convening Authority))

Subj: (ACCUSED'S NAME) PRELIMINARY INQUIRY REPORT

Ref: (a) (Verbal appointment of officer exercising summary
court-martial jurisdiction)
(b) MCM 1984, R.C.M. 303

Encl: (1) Statements of witnesses, documentary evidence, etc.

1. Per references (a) and (b), I have conducted a preliminary inquiry into the following alleged violation(s) of the Uniform Code of Military Justice by the subject named Marine:

(Brief description of charge(s) and specifications(s))

2. The following persons are witnesses and should be placed on legal hold:

| <u>Name</u> | <u>Rank</u> | <u>Org/Address</u> | <u>EAS/Date of Departure</u> |
|-------------|-------------|--------------------|----------------------------------|
|-------------|-------------|--------------------|----------------------------------|

3. **Report of Inquiry.** (Summarize the expected evidence and discuss availability of witnesses, location of items of real evidence, and any anticipated problems in the prosecution of the case.)

4. In view of the foregoing, I am of the opinion that in the interest of justice and discipline the charge(s) (should) (should not) be preferred.

(Signature)

Figure 2-1--Format of a Preliminary Inquiry Report.

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CHAPTER 3

MILITARY JUSTICE - NONJUDICIAL PUNISHMENT

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SOP FOR LAW AND LEGAL MATTERS

CHAPTER 3

MILITARY JUSTICE - NONJUDICIAL PUNISHMENT

3000. IMPOSITION OF NONJUDICIAL PUNISHMENT

1. Nonjudicial punishment may be imposed by a CO or OIC upon enlisted members of their Command, including members of other commands who have reported to the Command for TAD.

2. Officer punishment should be imposed at the lowest echelon capable of administering an adequate and appropriate punishment. However, certain officer punishments are reserved to a general officer in command (Uniform Code of Military Justice (UCMJ), Article 15(b)(1)(B)). Additionally, if a letter of censure is contemplated, one must consider the fact that the severity and effect of such punishment increases proportionately with the rank of the commander who imposes it. (See JAG Manual, Section **0106d(1).**) A recommendation to the Commanding General for disciplinary action in the case of an officer will be supported by a report of investigation conducted per the JAG Manual, by a report of the proceedings at preliminary office hours conducted by the organizational commander, or other similar record with developed factual findings. The original and two copies of the report, together with the specific recommendation of the organizational commander requesting the Commanding General's action, will be submitted.

3. As a general policy, nonjudicial punishment will not be imposed upon persons who have been tried for the same offense in a domestic or foreign court, whether convicted or acquitted, or whose cases have been adjudicated by juvenile authorities, except in those cases where punishment is considered essential in the interest of justice, discipline, and proper administration within the naval service. No person described above will be administered nonjudicial punishment without the prior permission of the officer exercising general **court-martial** jurisdiction over the Command. (See JAG Manual, Section **0116d(3)(b).**)

4. **MCO P5800.8**, LEGADMINMAN, provides specific instructions for preparation and maintenance of the unit punishment book. Procedures set forth therein must be strictly adhered to.

3001. PUNISHMENTS. Authorized nonjudicial punishments are contained in UCMJ, Article 15, and Marine Corps Manual (MCM), 1984, Part V, paragraph 5(b). A summary of the maximum punishment imposable upon enlisted members is as follows:

LIMITS OF PUNISHMENTS UNDER UCMJ, ARTICLE 15

| Imposed by | Imposed on Note (1) | Reduction | Forfeiture of pay Note (2) | Correc-tional Custody Note (3) | Restric-tion Note (4) | Extra Duties Note (4) |
|--------------------------|---------------------|------------|----------------------------|--------------------------------|-----------------------|-----------------------|
| Major or above | E-6 to E-9 | No | 1/2 one mo/ for 2 mos | No | 60 days | 45 days |
| | E-1 to E-5 | One grade* | 1/2 one mo/ for 2 mos | 30 days E-3/below | 60 days | 45 days |
| Capt and Below and OIC's | E-6 to E-9 | No | 7 days | No | 14 days | 14 days |
| | E-1 to E-5 | One grade* | 7 days | 7 days E-3/below | 14 days | 14 days |

* - Only if the grade from which demoted is within the promotion authority of the officer imposing the reduction.

Note (1) - Admonition or reprimand may be imposed in addition to or in lieu of all other punishments.

Note (2) - Forfeiture of pay must be imposed in whole dollar amounts only. Maximum forfeitures must be computed based on rank to which reduced, whether or not such reduction was suspended.

Note (3) - Correctional custody may only be imposed per MCM, 1984, Part V, paragraph 5c(4). All Marines adjudged correctional custody will serve such punishment at the East Coast Regional Correctional Custody Unit, Marine Corps Base, Camp Lejeune, NC.

Note (4) - Restriction and extra duties may be combined to run concurrently, but, the combination may not exceed the maximum duration imposable for extra duties. If restriction and extra duties are to be combined to run consecutively, there must be an apportionment per UCMJ, Article 15, paragraph (b).

3002. PROCEDURES

1. In imposing nonjudicial punishment, the CO/OIC will adhere to the procedures set forth in MCM, 1984, Part V, and JAG Manual, Section 0104. Prior to the Article 15 hearing, the CO/OIC must advise the accused that:

a. Unless attached to or embarked on a vessel, they have the right to demand trial by court-martial in lieu of nonjudicial punishment. Prior to exercising or waiving this right to remove the case to a trial by court-martial, the accused may be afforded the right to consult with an independent lawyer. Failure to allow the accused to consult with an independent lawyer will not invalidate the nonjudicial punishment, but it will prevent the record of the nonjudicial punishment from being used as aggravation in the event of a later court-martial.

b. If the accused accepts nonjudicial punishment, they will receive a hearing at which time the following rights will be accorded:

- (1) To be present before the officer conducting the hearing.
- (2) To be advised of the offense(s) of which they are suspected.
- (3) To have UCMJ, Article 31b, rights explained.
- (4) To be present during the presentation of all adverse information, whether by testimony of a witness in person or by the receipt of written statement(s), with copies of the latter being furnished to the accused.
- (5) To have available for their inspection all items of information in the nature of physical or documentary evidence which may be considered by the officer conducting the hearing.
- (6) To have full opportunity to present any matter, orally or in writing, in defense, mitigation, or extenuation of the offense(s) of which they are accused.
- (7) To be accompanied at the hearing by a personal representative, provided by the accused, who may, but need not, be a lawyer, to speak on their behalf.
- (8) To have present witnesses, including those adverse to the accused, upon request if their statements will be relevant and they are reasonably available.

c. If nonjudicial punishment is accepted, and if punishment is awarded, the accused will have the right to appeal the punishment awarded to a higher authority.

d. If the accused demands trial by court-martial in lieu of nonjudicial punishment, the alleged offense(s) may be referred to a court-martial.

2. Once the accused has indicated a willingness to accept the imposition of nonjudicial punishment, the CO/OIC will set a time and place for the conduct of the hearing and so inform the accused. When

requested by the alleged offender, the hearing will be open to the public to the extent permitted by available space, unless, in the opinion of the officer contemplating the imposition of nonjudicial punishment, security interests dictate otherwise.

3. If the accused is afforded the opportunity to consult with an independent lawyer prior to accepting nonjudicial punishment, that fact will be recorded on page 12 of the accused's SRB immediately prior to the commencement of the nonjudicial punishment hearing. A sample of the nonmandatory entry to be made is set forth in **MCO P1070.12G**, Marine Corps Individual Records Administration Manual (**IRAM**), paragraph 4015.2. **CO's/OIC's** are urged to adhere to this example.

4. Punishments imposed under UCMJ, Article 15, will take effect as prescribed in the JAG Manual, Section 0105(b).

3003. REPORTS REQUIRED. By the fifth working day of each month, the number of nonjudicial punishments adjudged for the preceding month will be reported telephonically to the Office of the Staff Judge Advocate (OSJA), Military Justice Branch.

3004. APPEALS OF NONJUDICIAL PUNISHMENT. A person punished under the authority of UCMJ, Article 15, who considers their punishment unjust or disproportionate to the offense may appeal to the next higher authority. If such appeal is made, it will be submitted within five days of imposition of punishment or the right to appeal will be waived in the absence of good cause shown (MCM, 1984, Part V, paragraph **7(d)**).

3005. COMPANY LEVEL APPEALS. Appeals of company level nonjudicial punishments are referred to the battalion commander for action. If the punishment imposed is of the kind set forth in UCMJ, Article **15(e)(1)-(7)**, the appeal must be referred to a judge advocate for review. If the punishment is of the kind imposed under UCMJ, Article 15(b)(2)(A)-(G) (company grade), the appeal may be, but is not required to be, referred to a judge advocate. In the event that an appeal is reviewed by a judge advocate, an opinion and recommendation will be prepared and forwarded to the battalion commander by the SJA. An endorsement effecting the recommended action will also be included.

3006. BATTALION LEVEL APPEALS. Appeals from battalion level nonjudicial punishments are referred via the chain of command to the Commanding General, MCCDC (C 052) for review and action. All battalion nonjudicial punishment appeals are referred to the OSJA for review prior to the Commanding General taking action. The SJA reviews the appeal and prepares a written opinion concerning the merits of the

appeal and the legality of the punishment. An endorsement is also prepared for the Commanding General reflecting the action recommended by the SJA.

3007. CONTENTS OF APPEALS. Appeals are submitted in naval letter format from the appellant to the immediate superior of the officer imposing the punishment, via the officer who imposed the punishment. Appeals will be in writing and may include the appellant's reason(s) for regarding the punishment as unjust or disproportionate. The decision to vacate a suspension of nonjudicial punishment may not be appealed. The contents of the forwarding endorsement of the officer who imposed the punishment will include:

1. Comments on any assertions of facts contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous;
2. Recitation of any facts concerning the offenses which are not otherwise included in the appeal papers;
3. A summary of nonjudicial punishment proceedings attached to the Unit Punishment Book;
4. Copies of all statements and documents which were considered as evidence at the office hours: and
5. The appellant's SRB.

3008. REQUESTS FOR STAY OF PUNISHMENT. When a nonjudicial punishment includes restraint or extra duties, the appellant may request, in writing, a stay of that punishment pending the outcome of the appeal. If action is not taken on the appeal within five days after the appeal was submitted, any unexecuted punishment involving restraint or extra duties will be stayed until action on the appeal is taken if the appellant has so requested.

SOP FOR LAW AND LEGAL MATTERS

CHAPTER 4

MILITARY JUSTICE - COURTS-MARTIAL

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SOP FOR LAW AND LEGAL MATTERS

CHAPTER 4

MILITARY JUSTICE - COURTS-MARTIAL

4000. GENERAL. The Staff Judge Advocate (SJA) has established a Military Justice Branch to provide legal services, technical assistance, and personnel support to special courts-martial convening authorities. Summary courts-martial convening authorities may request legal services by forwarding the charges and allied papers to the SJA using the form contained in figure 4-1, per paragraph 4002 of this Manual.

4001. ESTABLISHING COURTS-MARTIAL

1. General. A court-martial is established by written order of a commander authorized to convene it. Convening orders for summary courts-martial will be prepared by the convening authority utilizing officer personnel from within the convening authority's command. Convening orders for special and general courts-martial will be prepared by personnel of the Docketing Section, Office of the Staff Judge Advocate (OSJA), utilizing personnel nominated per subparagraphs 4001.2 and 4001.3 below, and submitted to the convening authority for approval. Thereafter, sworn charges preferred against particular individuals are tried by referral to an existing court.

2. Special Courts-Martial. The Director, Manpower Division, will request organizational commanders to nominate officers to constitute three special courts-martial boards. Per Uniform Code of Military Justice (UCMJ), Article 25(d)(2), selection of nominees will be based upon age, education, training, experience, length of service, and judicial temperament. Nominees will be selected without regard to race, color, religion, sex, national origin, or economic status. Organizational commanders will nominate persons who meet these criteria and such nominations will be considered from all available officer ranks.

3. General Courts-Martial. The Director, Manpower Division, will request organizational commanders to nominate officers to constitute each of two general courts-martial boards. Per UCMJ, Article **25(d)(2)**, selection of nominees will be based upon age, education, training, experience, length of service, and judicial temperament. Nominees will be selected without regard to race, color, religion, sex, national origin, or economic status. Organizational commanders will nominate persons who meet these criteria and such nominations will consider all available officer ranks.

4. Enlisted Members. In a special or general court-martial, an accused has the right to a court composed of at least one-third enlisted members. Accordingly, there is often a need to have enlisted Marines serve as court members. The Director, Manpower

Division, will request organizational commanders to nominate 15 enlisted Marines who will form a pool from which they will be selected to act as members in any special or general court-martial in which an accused requests enlisted members. Per UCMJ, Article 25(d)(2), selection of nominees will be based upon age, education, training, experience, length of service, and judicial temperament. Nominees will be selected without regard to race, color, religion, sex, national origin, or economic status. Organizational commanders will nominate persons who meet these criteria and such nominations will consider all available ranks.

5. Excusal from Service as a Member. Service as a member of a **court-martial** takes precedence over all other duties, and members will be excused only for good cause. Requests to be excused from sitting as a member for any particular trial or to be relieved as a member of the court will be made to the SJA. Members assigned to court-martial duty desiring to go on annual leave or who expect to be assigned TAD should make this fact known to the Military Justice Office (MJO). No member of a court-martial may be absent from the court during the trial of a case except for physical disability, as a result of a challenge, or by order of the convening authority.

4002. PRE-REFERRAL PROCEDURES

1. Initial Procedures. After a preliminary inquiry has been completed and a decision has been made to dispose of the case by other than dismissing the charges or imposing nonjudicial punishment, the convening authority will forward the complete preliminary inquiry, the SRB of the accused, and a request for legal services to the SJA. Within the OSJA, the Docket Chief, with the aid and advice of the MJO, will review the preliminary inquiry and draft the appropriate charges and specifications for summary, special, and general courts-martial. Should the preliminary inquiry be inadequate, the convening authority will be notified in order that the inadequacies may be rectified. An original charge sheet will then be typed by the personnel of the Docketing Section.

2. Preferral of Charges

a. After the charges are typed, they must be preferred per UCMJ, Article 30. To prefer the charges, an accuser, a person subject to the UCMJ, must swear to the truth of the charges to the best of their knowledge and belief. The person administering the oath must be a commissioned officer authorized to do so. See JAG Manual, Section 2502.

b. UCMJ, Article 30(b), requires that once charges are preferred, the accused shall be informed of the charges as soon as practicable. R.C.M. 308 requires that the immediate commander of the accused will cause the accused to be informed of the preferred charges, the name(s)

of the person(s) who preferred the charges and of any person who ordered the charges to be preferred, if known, and record this fact by executing section 12 on page 2 of the charge sheet.

c. The officer exercising summary court-martial jurisdiction over the accused will immediately, upon receipt of sworn charges, complete section 13 of page 2 of the charge sheet as to the time and date of the receipt of the charges (R.C.M. 403). The importance of a timely completion of this section of page 2 is that receipt of the charges tolls the running of the statute of limitations.

3. Referral for Trial. Upon receipt of preferred charges, the convening authority may take whatever action desired. The convening authority may dismiss the charges, refer the case for trial by summary or special court-martial, or order a formal pretrial investigation pursuant to the UCMJ, Article 32.

4003. SUMMARY COURTS-MARTIAL

1. If trial by summary court-martial is desired, a court must first be convened. Information pertaining to convening summary **courts-**martial is contained in Marine Corps Manual (MCM), 1984, Appendix 6, page **A6-2**. The summary court-martial officer should be a mature officer of at least the grade of captain, U.S. Marine Corps. The convening authority refers the case to the summary court-martial by completion of the first endorsement of the charge sheet.

2. Any violation of the UCMJ may be referred for trial by summary court-martial when it has been determined that a summary court-martial has the power to adjudge an appropriate and adequate punishment.

3. The accused has no right to be represented by a military lawyer at a summary court-martial (R.C.M. 1301(e)).

4. In every case, the summary court-martial officer, before arraignment, should advise the accused that they have the right to refuse trial by summary court-martial (R.C.M. 1303). Prior to exercising or waiving this right, the accused may be afforded the opportunity to consult with an independent lawyer. Failure to allow the accused to consult with an independent lawyer will **not** invalidate the summary court-martial, but it will prevent the record of the conviction from being used as aggravation in the event of a later court-martial. If the accused is given an opportunity to consult with an independent lawyer prior to accepting trial by summary **court-**martial, this fact must be recorded on the reverse side of page 13 of the accused's SRB immediately prior to commencement of the trial. A sample entry of this kind is set forth in **MCO P1070.12E**, paragraph 4016.2, **IRAM**. **CO's/OIC's** are urged to adhere to this example.

5. In summary courts-martial cases in which a **"not guilty"** plea is entered to any charge and specification and in which a finding of **"guilty"** results, the evidence considered by the summary court-martial relative to guilt or innocence must be summarized and attached to the record. In cases in which a guilty plea is entered to any charge and specification, R.C.M. **910(c)**, (d), and (e) will be complied with. It is not necessary to summarize the **providency** inquiry conducted in guilty plea cases. R.C.M. 1305 sets forth the information to be included in the record of proceedings. In all cases, the original, a duplicate original, or a certified true copy of the convening order must be attached to the record. Matters considered by a summary court-martial in extenuation or mitigation must, in all cases, be summarized and attached to the record. A certified true copy of all records of prior convictions received in evidence will be attached to the record of trial.

6. The original record of trial and the chronology sheet for summary court-martial must be forwarded to the Commanding General, MCCDC (C 052) for review.

7. Assistance and an informational handout is available from the MJO, OSJA, for officers appointed to conduct summary courts-martial.

4004. SPECIAL COURTS-MARTIAL

1. If a trial by a special court-martial is desired, a court must first be convened. This may be done by executing a convening order prepared by the SJA which appoints previously nominated personnel for duty as court-martial members (see paragraph 4001.2 of this Manual). As an alternative, a special court-martial may be convened by executing a convening order appointing a court composed of members from the convening authority's own organization. If the latter option is chosen, the criteria for the selection of members will be as established in UCMJ, Article 25(d)(2).

2. The convening authority may refer a case to a properly convened special court-martial by completing the first endorsement of the charge sheet. Whenever the convening authority places the instruction **"A Bad Conduct Discharge is not authorized"** in the referral endorsement on page 3 of the charge sheet, a bad conduct discharge cannot be adjudged.

3. Following referral, the convening authority will cause the charge sheet and allied papers to be returned by courier to the SJA. Upon receipt, the Docket Chief will ensure that the charge sheet is complete and correct. Thereafter, the case will be docketed by the MJO. If the accused is in pretrial confinement, an attorney will see the accused within 72 hours of confinement and establish an attorney/

client relationship. If the accused is not in pretrial confinement, the Senior Defense Counsel will appoint a defense counsel to represent the accused. The **MJO** will appoint a trial counsel to represent the United States. A military judge will be appointed by the Atlantic Judicial Circuit. A copy of the charge sheet and convening order will be provided by the Military Justice Section to counsel and to the military judge as soon as assignments are made.

4. The detailed trial counsel will cause a copy of the charges to be served upon the accused per the UCMJ, Article 35.

4005. FORMAL PRETRIAL INVESTIGATIONS

1. If trial by general court-martial should, or might possibly, be recommended, a formal pretrial investigation under the UCMJ, Article 32, shall be ordered by the cognizant summary court-martial convening authority.

2. The officer appointed to conduct the formal pretrial investigation should be a mature field grade officer or a company grade officer possessing legal training and experience. The SJA will make a judge advocate available to serve as investigating officer or as counsel for the investigating officer. A judge advocate assigned as counsel is not the investigator and the judge advocate's presence should in no way diminish the pretrial investigating officer's responsibility for the conduct of a thorough and impartial investigation. At the time the pretrial investigation is ordered, the SJA will make available counsel to represent the accused at the investigation.

3. Investigating officers should generally follow the procedures set forth in R.C.M. 405, utilizing the Investigating Officer's Report (DD Form 458) as the basis for their reports. All witnesses will be sworn. If the testimony of a material witness cannot be adequately summarized without distorting the meaning of such testimony, or if the meaning of a witness' testimony is unclear or contested, a verbatim transcript of such testimony will be submitted. Otherwise, sworn statements or summarizations of the testimony of all witnesses will be taken and submitted. In this regard, it is emphasized that unsworn statements of witnesses may not be properly received and considered by the investigating officer over the objection of the accused or their counsel.

4. During the conduct of the hearing, the investigating officer should inquire into the availability of all witnesses for appearance at a later trial and, if it appears that a witness may be scheduled for transfer in the immediate future, the pretrial investigator will notify the convening authority by letter requesting that a legal hold be placed on that person.

4006. RECOMMENDATION FOR GENERAL COURTS-MARTIAL

1. Prior to forwarding charges recommending trial by general **court-martial**, the officer ordering the investigation will make a preliminary examination of the charges and allied papers to determine whether the specifications are brought under the proper punitive articles, are formally correct, and are supported by the evidence. If a charge involves the inclusion of any person, offense, or matter not fairly included in the charges as preferred, new charges, consolidating all offenses which are to be charged, should be signed and sworn to by an accuser. If the charges are changed to allege a more serious or essentially different offense, a new investigation should be directed to give an accused the opportunity to exercise the privileges afforded by R.C.M. 405(f) and UCMJ, Article 32(b), with respect to the new or different matters alleged.

2. Thereafter, the case may be forwarded to the general court-martial convening authority by a letter of transmittal which must contain the following enclosures or statements:

a. The original of the Investigating Officer's Report (DD Form 458) to include all evidence and testimony received and considered by the pretrial investigating officer.

b. The accused's SRB.

c. A properly completed charge sheet.

d. A recommendation by the officer ordering the investigation that the accused be tried by general court-martial.

e. An assertion that a copy of the substance of the testimony taken during the investigation was furnished to the accused.

4007. OTHER MATTERS PRELIMINARY TO TRIAL1. Witnesses

a. The SJA will budget for and fund witness fees and travel requirements for all special court-martial convening authorities for which the Commanding General is the supervisory authority.

b. When a material witness is to be transferred prior to investigation or trial, a request will be submitted by the convening authority to the Commanding General, MCCDC (C 011) for the retention of such witness. A copy of the request will be sent to the witness' co. The request will contain the tentative investigative hearing or trial date. The convening authority will notify the Commanding

General when the detained witness is no longer required. An investigation or trial involving a detained witness will be given priority and processed expeditiously. No person may be held as a witness beyond the termination of their enlistment.

c. If a military person, desired as a witness, is not a member of this Command or the Command of the convening authority and such witness' attendance would involve travel at government expense, the trial counsel, with the concurrence of the convening authority and the SJA, will request the appropriate superior to issue the necessary orders. (See R.C.M. 703(e).)

d. Payment of fees or expenses for civilian witnesses will be made only upon authorization of the Commanding General, MCCDC. Requests to subpoena civilian witnesses will be submitted by letter to the Commanding General, MCCDC (C 052). The name and address of the witness and a short statement justifying the requirement for the witness' presence must be set forth in the request.

e. The convening authority will be notified by the trial counsel of the identity of witnesses needed at least 36 hours in advance of trial. It will be the responsibility of the convening authority to ensure that those witnesses are present at the time of trial.

2. Grants of Immunity. Grants of immunity can only be given by the officer exercising general court-martial jurisdiction over the accused. (See R.C.M. 704) The form to be utilized in drafting a grant of immunity is contained in JAG Manual, Appendix A-1d(2).

3. Notification to Parents, Spouse, or Guardian. Each CO or OIC is tasked with the responsibility of ensuring that an individual is counseled to advise parents, spouse, or guardian, as appropriate, of the circumstances surrounding their trial by a general or special court-martial.

4. Request for Polygraph Examination

a. A request for an exculpatory polygraph prior to trial will be submitted by the individual seeking exculpation to the Commanding General, MCCDC (C 054) via the appropriate special court-martial convening authority. The letter will contain a brief summary of the circumstances involved. The Security Manager will then submit the request to the CMC (MPH) for approval/disapproval.

b. The procedures to be followed in the event of such a request are contained in SECNAVINST 5520.4, MCO 5830.2, and MCCDCO 5800.4.

5. Procedures to Obtain Psychiatric Examinations in Connection with Courts-Martial

a. The question of the sanity of an accused arises mainly in two contexts: mental responsibility at the time of the commission of the offense and competence to stand trial. A person is not responsible

for criminal conduct if, as a result of mental disease or defect, at the time of the alleged criminal conduct they were unable to appreciate the nature and quality or wrongfulness of their conduct. A person is not competent to stand trial if they lack sufficient mental capacity to understand the nature of the proceedings against them and to cooperate intelligently in their defense. (See R.C.M. 706 and R.C.M. 916.)

b. In cases where a CO, investigating officer, trial counsel, or defense counsel has reason to believe that there is sufficient evidence to put the question of sanity in issue, such belief will be reported to the convening authority. This report will be made in the form of a request for a psychiatric examination and will include sworn statements of those persons who have observed the questionable behavior.

c. Upon receipt, the convening authority will evaluate the request and, if the issue of insanity or lack of competency is fairly raised, will order a psychiatric evaluation by forwarding the request to the Psychiatrist, Naval Medical Clinic, MCCDC, over the convening authority's signature, for appropriate action. (See MCCDCO 6520.1.) The request will include the following enclosures:

- (1) Copy of the charge sheet.
- (2) Copy of Article 32 investigation, preliminary inquiry, or offense report.
- (3) Sworn statements of persons observing questionable behavior, or synopsis of reasons for doubting the mental responsibility or capacity of the accused.
- (4) Previous psychiatric consultation, if known.
- (5) SRB.

d. After referral to courts-martial, where insanity is put in issue and a psychiatric examination has not been previously ordered by the convening authority, the military judge will normally order an examination, if deemed appropriate.

6. Pretrial Agreements

a. The primary source of information concerning the negotiation and submission of pretrial agreements for both special and general courts-martial is the JAG Manual, Section 0129. These provisions must be followed by both the government and defense counsel in any case involving a pretrial agreement. The JAG Manual, Appendices A-1-e and A-1-f, provides the suggested forms to be followed in drafting such an agreement. Pretrial agreements must be submitted to the convening

authority via the trial counsel. This does not, however, preclude the defense from personally presenting its position on the advisability of accepting its offer to plead guilty to the convening authority or, in general courts-martial cases, to the SJA. This is to be encouraged since it may give the convening authority a more knowledgeable basis upon which to make a decision.

b. The pretrial agreement, which will be reduced to writing and signed by the accused and the convening authority, or trial counsel with the consent of the convening authority, should reflect all the agreements and understandings between the parties. Thus, agreements to dismiss one of the charges or to defer confinement should properly be included. (See R.C.M. 705.)

7. Composition of the Court

a. Prior to the date of trial, the assigned trial counsel will ascertain the accused's desire to be tried by a military judge or by a court composed of members.

b. Should the accused desire trial with members, the trial counsel will notify the court members of the time, place, and uniform for trial.

c. Should the accused request trial by court with members, or should the request for trial by military judge alone be denied, an accused enlisted person has the right to have enlisted persons as members of the court. In case of such a request, the SJA will obtain the required enlisted court members and prepare and submit to the convening authority appropriate modifications to the convening order for consideration and approval pursuant to the UCMJ, Article 25(d)(2).

8. Chasers and Court Orderlies

a. The accused's immediate CO will provide all required chasers and court bailiffs. Personnel so assigned will be senior in rank to the accused and qualified per MCCDCO 1640.1. A chaser is required to escort an accused to trial from pretrial confinement and, following trial, to escort persons for whom confinement has been adjudged per the procedures of paragraph 4008 of this Manual. A bailiff is required at every special or general court-martial.

b. The chaser and/or bailiff will report to the trial counsel in the uniform of the day with duty belt at least 30 minutes before the commencement of trial. In addition to the instructions provided by the trial counsel, the chaser and/or bailiff will be guided in the performance of their duties by the provisions of the JAG Manual, Appendix A-1-q.

9. Appearance of the Accused at Trial. The accused will appear at trial in the proper uniform, wearing the proper insignia of grade and all decorations and medals to which entitled. The responsibility of assuring that the accused is before the court in proper uniform rests upon the CO and defense counsel. In cases where the accused is confined, the CO is responsible for notifying the OIC of the confinement facility 24 hours prior to trial of the hour and date of trial.

4008. ACTION AFTER TRIAL. At the conclusion of the trial, the trial counsel will inform the accused's CO of the results of the trial. A copy of this letter will be delivered to the CO, Correctional Facility, if confinement is involved. The trial counsel will take prompt and appropriate action with respect to the confinement status of the accused. If the accused has been in pretrial confinement and is acquitted, or if no confinement is adjudged, the trial counsel will immediately inform the convening authority in order that a Prisoner Release Order (DD Form 367) may be prepared to effect the accused's release. If confinement is directed, the accused will be returned to the command of the convening authority, under escort of the chaser, for confinement. It will be the **CO's** responsibility to ensure that the necessary requirements for confinement (confinement order, **pre-**confinement physical, minimum clothing, health and comfort items, etc.) are provided after the accused is ordered into confinement. See MCCDCO 1640.1. Thereafter, it is the **CO's** responsibility to issue changes of status to the corrections officer, as required by SECNAVINST 1640.9, paragraph 8119, and MCCDCO 1640.1.

4009. DEFERMENT OF CONFINEMENT. Deferment of confinement is a postponement of the service and of the running of the sentence. It may be granted pursuant to R.C.M. 1101 upon written application by the accused. A convening authority may defer confinement at any time after adjournment of the court-martial upon request of the accused. Deferment may continue only until the sentence to confinement is ordered executed in the convening authority's action on the record of trial or unless sooner revoked by the convening authority because of post-trial misconduct by the accused. The decision to defer is discretionary and must be in writing. The accused must establish that release from confinement is in the best interests of the community and the accused. Factors for consideration when determining whether to grant the deferment are contained in R.C.M. **1101(c)(3)**.

4010. PROCEEDINGS TO VACATE SUSPENDED SENTENCE

1. Vacation of Suspended General Court-Martial Sentence or Special Court-Martial Sentence Including a Bad Conduct **Discharge**. Before the

vacation of the suspension of any general court-martial sentence, or of any special court-martial sentence which, as approved, includes a bad conduct discharge (BCD):

a. The officer exercising special court-martial jurisdiction over the probationer will, per R.C.M. 1109:

(1) Cause the probationer to be notified of the time, place, and purpose of the vacation proceedings, together with the alleged violations of probation upon which the proceedings are based.

(2) Ensure that the probationer has been advised of their rights to qualified counsel. If the probationer desires to be represented by counsel, a written request will be forwarded to the Commanding General, MCCDC (C 052). If the probationer elects to waive right to counsel, such waiver will be obtained in writing on the Report of Proceedings to Vacate Suspension (DD Form 455) at the time of the hearing.

(3) Disclose to the probationer the evidence against them.

(4) Personally conduct a hearing utilizing the Report of Proceedings to Vacate Suspension (DD Form 455) as a procedural guide and as a record of the proceedings. At such hearing, the probationer will be afforded those rights which are set forth on DD Form 455.

(5) Prepare the report of proceedings, including a specifically justified/recommended disposition. In setting forth recommendations and reasons, the remarks section of DD Form 455 may be utilized. In all cases, block 20 of DD Form 455 will be marked "**not** applicable."

(6) Forward to the Commanding General, MCCDC (C 052) the original and three copies of the complete record of proceedings.

b. The SJA will:

(1) Summarize the evidence presented at the vacation proceedings.

(2) Render an opinion as to the legal sufficiency of the proceedings and the effect of any error or irregularity.

(3) Recommend the action to be taken to the officer exercising general court-martial jurisdiction.

c. The officer exercising general court-martial jurisdiction will:

(1) Make the decision whether or not to vacate the suspension of the sentence, or part of the sentence. This decision must be based

solely on the Report of Proceedings to Vacate Suspension (DD Form 455) and enclosures, the recommendations and reasons of the officer exercising general court-martial jurisdiction, and the review of the SJA.

(2) If the suspension of all or part of the sentence is to be vacated, the officer exercising general court-martial jurisdiction will specifically state in their action the evidence relied on and the reason for the vacation of suspension.

2. Vacation of Suspended Special Court-Martial Sentence Not Including a Bad Conduct Discharge or Suspended Summary Court-Martial Sentence. Before the vacation of the suspension of a special court-martial sentence not including a BCD, the officer exercising special court-martial jurisdiction over the probationer will:

a. Follow the procedures set forth in paragraphs **4009.1a(1)** through (4) of this Manual, except that the hearing need not be conducted personally by the officer exercising special court-martial jurisdiction.

b. Prepare a Report of Proceedings to Vacate Suspension (DD Form **455**), or have such a report prepared by the officer conducting the hearing.

c. Have the supplementary action and/or court martial order published when vacation and execution of a suspended sentence is ordered.

d. Forward to the Commanding General, MCCDC (C 052) the originals of all documentation to be filed with the original record of trial. Unless pre-vacation confinement has been ordered per paragraph 4009.3 of this Manual, confinement will not be ordered until the supplementary action and/or court-martial order has been published.

3. Confinement Prior to Completion of Vacation Proceedings. When it is considered desirable to confine a probationer prior to vacation of a suspended sentence which includes confinement and/or a punitive discharge, a preliminary hearing must be held by a neutral and detached officer to determine whether there is probable cause to believe that the probationer has committed acts in violation of the conditions of the suspension. Whenever possible, the military magistrate should be utilized to conduct the preliminary hearing. (See R.C.M. 1109(c).)

4011. CLEMENCY FOLLOWING INITIAL ACTION OF CONVENING AUTHORITY

1. Any **CO/OIC** who desires clemency action to be taken on a general court-martial sentence, or a special court-martial sentence involving a punitive discharge after the initial action has been taken by the

convening authority, will submit a request to the Commanding General setting forth, specifically, those actions desired to be taken and the justification for those actions.

2. Clemency action relative to a summary court-martial sentence or a special court-martial sentence, not involvina **punitive discharge**, may be taken by the CO authorized to convene the type of court that adjudged the sentence. Such supplementary orders as are necessary to promulgate this action will be published by the CO.

SOP FOR LAW AND LEGAL MATTERS

(ORGANIZATION HEADING)

5800
(Originator's code)
(Date)

From: Legal Officer
To: Military Justice Officer, Office of the Staff Judge
Advocate, Marine Corps Base, Marine Corps Combat Development
Command

Subj: REQUEST FOR LEGAL SERVICES IN THE CASE OF _____

Encl: (1) SRB of SNM
(2) **NIS/CID/Incident** Report (if available)

1. The following information is submitted:
 - a. Name:
 - b. SSN:
 - c. Rank/Grade:
 - d. DOB:
 - e. PEBD:
 - f. AFADBD:
 - g. Awards:
 - h. MOS:
 - i. EAS:
 - j. Pro/Con:
 - k. Disciplinary History.
 - l. Base Pay:
 - m. Pretrial Restraint:
 - n. Type of Court-Martial requested: **SCM/SPCM/ART 32/GCM**
2. Request charges be preferred.
3. Service Record Book (SRB) available: YES/NO.
4. Any request for separation in lieu of trial by court-martial would receive a recommendation for approval/disapproval by this Command.

SIGNATURE

Figure 4-1.--Format of a Letter Requesting Legal Services.

SOP FOR LAW AND LEGAL MATTERS

CHAPTER 5

MILITARY JUSTICE -
COURTS-MARTIAL REVIEW AND ADMINISTRATIVE SEPARATIONS

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CHAPTER 5

MILITARY JUSTICE -
COURTS-MARTIAL REVIEW AND ADMINISTRATIVE SEPARATIONS

5000. SUMMARY COURT-MARTIAL. The function of a summary court-martial is to exercise justice promptly for relatively minor offenses. The summary court-martial will thoroughly and impartially inquire into both sides of the matter and will ensure that the interests of both the government and the accused are safeguarded.. A summary **court-**martial has the same powers as a trial counsel of a general or special court-martial to compel the attendance of civilian witnesses by subpoena and to take depositions. Summary courts-martial are governed by the provisions of the Manual for Courts-Martial (MCM), 1984, Chapter 13. An informational handout is available from the Office of the Staff Judge Advocate (OSJA).

5001. RECORD OF TRIAL. The record of trial will be prepared by the summary court-martial officer per R.C.M. 1305(b). Additionally, the summary court-martial will include with the record a summary of the evidence considered concerning any charges to which the accused pleaded not guilty but of which the accused was found guilty. The summary court-martial will then cause the accused to be served with a copy of the evidentiary summary.

5002. SUBMISSION OF MATTERS BY THE ACCUSED. The accused has seven days after the sentence is announced to submit matters which tend to extenuate or mitigate the offense, per R.C.M. 1105(c)(3). The convening authority may, for good cause, grant an additional 20 days for submission of clemency matters. The accused may waive in writing the seven-day period.

5003. CONVENING AUTHORITY'S ACTION. After the seven days, or after the accused waives the seven-day period, the convening authority will take action on the case per R.C.M. 1306(b). Care should be taken to ensure that the convening authority's action is complete. A copy of the action will be forwarded to the accused. Note, however, that any sentence to confinement begins to run as of the date it is adjudged. Accordingly, should confinement be adjudged, an individual should be incarcerated at the completion of the trial, absent a deferment request from the accused which is granted by the convening authority.

5004. JUDGE ADVOCATE'S REVIEW

1. After the convening authority's action, the record will be forwarded to the Review Officer, OSJA, for a judge advocate's review per R.C.M. 1112. Should the Review Officer recommend corrective action, he will prepare an action brief and a recommended action will be prepared. After the modified action is signed, or after the judge advocate's review is signed, the case will be filed.

2. Should the action be modified by the Commanding General, MCCDC, a copy of the modified action will be forwarded to the accused's organization to ensure that the modified action is reflected in the accused's service records.

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CHAPTER 5

MILITARY JUSTICE -
COURTS-MARTIAL REVIEW AND ADMINISTRATIVE SEPARATIONS

SECTION 1: SPECIAL COURTS-MARTIAL

5100. GENERAL. Unless otherwise limited by superior competent authority, special courts-martial may be convened by persons occupying positions designated in the Uniformed Code of Military Justice (UCMJ), Article 23, and by commanders designated by the Secretary of the Navy.

5101. RECORD OF TRIAL AND SUBMISSIONS OF MATTERS BY THE ACCUSED. In each special court-martial, the trial counsel will cause a copy of the record of trial to be served on the accused as soon as the record of trial is authenticated. This will be accomplished by the Review Section. Upon receipt of the record of trial by the accused, the trial counsel may submit to the convening authority matters which tend to extenuate or mitigate the offense, per R.C.M. 1105, within certain specified time periods. The Review Section will monitor the time period to ensure that the case is finalized as soon as possible.

1. After a special court-martial, the accused may submit matters to the convening authority 10 days after a copy of the authenticated record of trial or, if applicable, a copy of the Staff Judge Advocate's (**SJA's**) recommendation to the convening authority is served on the accused. The convening authority may extend the **10-day** period for not more than 20 additional days.

2. The accused may waive the time periods allowed and the convening authority may then take action on the case as if the time period had elapsed. The Review Section, at the time of service of the record on the accused, ascertains if the accused desires to waive the time period and, if so, obtains such waiver in writing.

5102. STAFF JUDGE ADVOCATE'S RECOMMENDATION. In cases in which a bad conduct discharge (BCD) has been adjudged, the SJA will, before the convening authority's action is taken, provide to the convening authority the **SJA's** recommendation required by R.C.M. 1106. Before providing the recommendation to the convening authority, the Review Officer will cause a copy of the **SJA's** recommendation to be served on the defense counsel for response, per R.C.M. 1106(f).

1. Counsel for the accused may submit, in writing, corrections or rebuttal matter and may comment on any other matter.

2. Counsel for the accused will be given 10 days from service of the record of trial or receipt of the **SJA's** recommendation, whichever is later, in which to submit comments on the recommendation. The convening authority may, for good cause, extend the period on which comments may be submitted for up to 20 additional days.

5103. CONVENING AUTHORITY'S ACTION. After matters submitted per R.C.M. 1105, have been considered, or after the time period has elapsed or been waived, the convening authority may take action on the case.

1. The convening authority will consider the following matters prior to taking action on the case, per R.C.M. 1107(b)(3):

a. The results of trial.

b. The recommendation of the SJA under R.C.M. 1106 if the sentence includes a BCD.

c. Any matters submitted by the accused under R.C.M. 1105 and, if applicable, R.C.M. 1106(f)(4).

2. The convening authority may also consider the following matters prior to taking action on the case:

a. The record of trial.

b. The personnel records of the accused and such other matters the convening authority considers appropriate. The accused should be notified of any adverse matter considered which is not in the record or of which the accused is not considered to be on notice. Notice to the Review Section of any additional adverse matter must be made so that notice may be given by the Review Section to the accused if required.

3. **After** the convening authority considers all matters required by **R.C.M.** 1107(b)(3), **advise** the SJA of approval or disapproval of the legal sentence. **Upon** receipt thereof, the SJA will prepare an action and court-martial order for the convening authority's signature. After signature by the convening authority, the action and order will be returned to the SJA for distribution **by** the Review Section.

5104. FURTHER REVIEW

1. Per R.C.M. 1112, the special court-martial and the convening authority's action will be reviewed by a judge advocate in cases where no BDC was adjudged or when the accused has waived further appellate review. Such review will be done after the convening authority takes action and prior to filing the case.

2. In cases where a BCD was adjudged and has been approved by the convening authority, and in which the accused has not waived further appellate review, the Review Officer will, after the convening authority's action, forward the case to the Judge Advocate General of the Navy for review by the Court of Military Review as required by R.C.M. 1201.

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CHAPTER 5

MILITARY JUSTICE -
COURTS-MARTIAL REVIEW AND ADMINISTRATIVE SEPARATIONS

SECTION 2: GENERAL COURTS-MARTIAL

5200. REVIEW OF GENERAL COURTS-MARTIAL. General courts-martial will be convened by the Commanding General, Marine Corps Base, Marine Corps Combat Development Command. Service of the record of trial, preparation of the convening authority's action, and further review will be accomplished as for special courts-martial which include a BCD. If the sentence does not include death and the accused has waived appellate review under R.C.M. 1110, the record may be reviewed by a judge advocate pursuant to R.C.M. 1112.

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CHAPTER 5

MILITARY JUSTICE -
COURTS-MARTIAL REVIEW AND ADMINISTRATIVE SEPARATIONS

SECTION 3: ADMINISTRATIVE SEPARATIONS

5300. GENERAL. The SJA has an Administrative Discharge Section to provide technical assistance to units which desire to administratively separate a unit member in advance of the end of active service contract date.

5301. GUIDELINES FOR ADMINISTRATIVE SEPARATION. **MCO 1900.16**, Marine Corps Separation and Retirement Manual (MARCORSEPMAN), provides the guidelines for bases for administrative separation, notification procedures to be utilized when a Marine is recommended for administrative separation, guide for characterization of service as Honorable, General (under honorable conditions), Other Than Honorable Conditions, or uncharacterized, and a guide for the review of separation packages. The MARCORSEPMAN also provides, in certain cases, the warnings/counselling a Marine must receive prior to initiation of administrative discharge action.

5302. INITIATION PROCEDURES. Administrative separation is initiated by notifying the Marine (respondent) of the basis or bases for separation, the character of discharge which the commander recommends, and the respondent's options in response to such recommendation, per **MCO P1900.16C, para. 6303** or 6304.

5303. FORWARDING OF ADMINISTRATIVE SEPARATION PACKAGE. Upon completion of notification, advice of defense counsel, if applicable, and election by the respondent to accept or refuse administrative separation, the package will be forwarded to the OSJA, Administrative Discharge Section, for review. A thorough review of the recommendation for separation will be conducted, to include the appropriateness of the basis, the advice provided the respondent, the nature of characterization recommended, and the sufficiency of the grounds for separation. If applicable, the presence and accuracy of warnings required per **MCO P1900.16C, para. 6105**, will be checked. Minor deficiencies in the package will be corrected by direct liaison with the unit legal officer. Major deficiencies will be corrected by returning the package to the unit with instructions for correction. **NOTE:** In cases where a counselling entry has been made and the entry contains language to the effect that if the individual's conduct does not improve he/she will be discharged, then some infraction/misconduct by the respondent must be documented (page 11 entry, statement, etc.) subsequent to the paragraph 6105 counselling entry. Stated otherwise, don't advise a respondent that, unless their conduct improves they

will be discharged and then, without documenting how the respondent violated the probationary status, try to process the respondent for separation.

5304. ADMINISTRATIVE DISCHARGE BOARDS. In those cases in which a Marine is entitled to consideration of the recommendation for basis and characterization of administrative separation by an administrative discharge board, the Commanding General, MCCDC will convene the board. A Marine may elect to waive or give up the right to have an administrative discharge board consider their case. In non-waiver cases, after consideration of the evidence, the board will conclude whether the basis for separation is supported, and will recommend retention or separation, and an appropriate characterization. The board results will be incorporated into the package.

5305. ACTION BY THE STAFF JUDGE ADVOCATE. Upon completion, and correction if necessary, of the package, the SJA will advise the Commanding General, MCCDC on the nature, basis, and characterization of the recommended separation, and provide advice concerning whether the separation, as recommended, is appropriate and supported by the Marine's record of service. An endorsement will be prepared for signature by the Commanding General, MCCDC to approve or disapprove the recommendation of the CO. If the separation is the result of a recommendation by an administrative discharge board, the recommendation of the board will be provided to the Commanding General, MCCDC along with all evidence.

5306. NOTIFICATION OF ACTION TAKEN. After decision and action by the Commanding General, MCCDC the unit will be notified of the action and instructed to inform the respondent. All actions directed by the Commanding General, MCCDC will be taken.

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CHAPTER 6

APPELLATE LEAVE

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CHAPTER 6

APPELLATE LEAVE

6000. GENERAL. The regulations, applicability, and procedures for granting leave to Marines awaiting dismissal or punitive discharge are set forth in **MCO P1050.3G**, paragraph 2025. A Marine tried by general or special court-martial whose sentence extends to dismissal or punitive discharge may be placed on involuntary appellate leave. Before an individual may be granted appellate leave, however, **CO's** must ensure that the requirements of Parts III and VIII of SECNAVINST 5815.33 have been met.

6001. REQUESTS FOR APPELLATE LEAVE

1. Requests for appellate leave orders for Marines who meet the criteria and processing requirements of SECNAVINST 5815.33 and **MCO P1050.3E**, paragraph 2025, will be submitted to the Commanding General, Marine Corps Combat Development Command (MCCDC) (C 052). Requests will include any of the following applicable documentation which has not previously been submitted to the Commanding General:

a. Signed copies of Progress Reports (DD Forms 1476 through 1479) **prepared** by the CO, if the accused was sentenced to confinement in excess of 60 days.

b. A copy of an executed waiver of clemency review or a request for restoration/clemency has been submitted per SECNAVINST 5815.3. In cases where the Naval Clemency and Parole Board have already acted, include a copy of the decision of the Naval Clemency and Parole Board.

c. A copy of any psychiatric evaluation conducted per SECNAVINST **5815.3E**.

d. If a Marine fails to provide a viable leave address, the following should be designated by the CO, if available:

(1) Local address (other than government quarters) if a Marine is married and residing with family.

(2) Current address of parents or other primary next of kin.

(3) Home of record reflected on the most recent DD Form 1966.

e. A copy of an executed power of attorney. Refusal by a Marine to execute a power of attorney will not preclude processing for involuntary appellate leave.

f. A copy of a physical examination showing the Marine is qualified for discharge.

2. Upon receipt of a request for involuntary appellate leave, the Staff Judge Advocate (SJA) will review the request for compliance with this Manual and SECNAVINST 5815.3 and **MCO P1050.3**. Following review, the request will be forwarded to the Military Personnel Officer, Manpower Division, for issuance of orders.

6002. ACTION BY THE COMMANDING OFFICER

1. Following the issuance of such orders, the CO will place a copy of the authorization in the SRB and forward an additional copy to the Commanding General, MCCDC (C 052) for insertion in the record of trial. Both copies will bear the endorsement and original signature of the servicemember. If a Marine refuses to receipt for the order, the CO will personally authenticate the following entry on the original orders and on the copies of orders:

"I certify that these involuntary appellate leave orders were personally delivered to (name) at (time) on (date). (Name) has been informed of the contents of these orders and the requirement to keep the commanding officer informed of any changes in leave address. After being so informed, (name) has refused to receipt for these orders in writing. **/s/** (Commanding Officer)."

2. Neither a mileage allowance nor transportation in kind is authorized for Marines ordered on voluntary appellate leave. Accordingly, Marines on such leave are required to bear all travel expenses to their leave address and, in the event of a return to duty determination, back to their place of duty. The nonpayment of travel entitlements do not affect a commander's prerogative to order a Marine to involuntary appellate leave if the situation so warrants. Marines ordered to involuntary appellate leave will be informed that, at the time of their discharge, they remain eligible for reimbursement of transportation costs incurred when ordered to involuntary appellate leave.

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CHAPTER 7

ADMINISTRATIVE INVESTIGATIONS

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CHAPTER 7

ADMINISTRATIVE INVESTIGATIONS

7000. SCOPE. To provide supplemental instructions for the conduct and reporting of investigations. Basic guidelines for administrative investigations are contained in the Judge Advocate General (JAG) Manual.

7001. MANDATORY INVESTIGATIONS. Incidents falling into the categories listed below must be investigated:

1. Injury. Injury to military personnel (other than by enemy action) which results in physical inability to perform duties for a period in excess of 24 hours (as distinguished from a period of hospitalization for evaluation or observation) or injury which is likely to result in permanent disability must be investigated. In those cases where there is no possibility of a finding of misconduct, or no possibility of a liability claim, the report of injury may be submitted on the Injury Report, NAVJAG Form 5800/15.

2. Disease. An investigation is required for any disease suffered by military personnel which results in loss of time from duty in excess of 24 hours (as distinguished from a period of hospitalization for evaluation or observation) and which is attributable to vicious habits, intemperance, or other factors suggesting misconduct.

3. Death. In any case in which the death of a member of the naval service occurred, other than from natural causes, and in all cases of apparent suicides, an investigation is required. In any case in which civilian or other **nonnaval** personnel are found dead on a naval installation under peculiar or doubtful circumstances, an investigation must be conducted.

4. Claims. An investigation is required when claims against or in favor of the government may be involved. Examples of such cases are:

a. Damage to private property by government personnel (military or civilian) while such personnel are engaged in government business.

b. Injury to civilians (including, but not limited to, dependents and employees) by government personnel while such personnel are engaged in government business.

c. Damage to government property by government personnel who are not engaged in lawful government business, and damage to government property by persons other than government personnel.

d. Injury to government personnel by persons other than government personnel or by government personnel who are not engaged in lawful government business, where the government has incurred medical expenses.

7002. SPECIAL CASES. An investigation not otherwise required by the JAG Manual or other directives will be conducted when there is an extensive loss, damage, or destruction of government property; where there has been a failure of equipment which should be brought to the attention of higher authority for design modifications; where the conduct of persons involved in the incident is especially worthy of praise or censure; or, where an investigation would probably indicate a method of preventing similar incidents in the future.

7003. NONAPPROPRIATED FUND ACTIVITIES. Upon the occurrence of an incident which may result in claims for or against an authorized nonappropriated fund activity, involving loss or damage to property or loss of funds, the OIC will report that fact to the Commanding General, Marine Corps Combat Development Command (MCCDC) (C 052).

7004. RESPONSIBILITY TO ORDER. The responsibility for ordering necessary investigations rests upon the CO of the organization to which the involved military personnel are attached, to which the involved government property belongs, and/or, in the case of civilian employees, to which the employee's OIC is attached.

7005. MULTIPLE INVESTIGATIONS OF THE SAME INCIDENT. If it is determined that an investigation should be conducted and personnel and/or government property of more than one organization are involved, only one investigation will be made unless otherwise required. The decision as to which activity will conduct the investigation will be made pursuant to the following criteria:

1. Local Interest. In incidents involving local organizations only, the senior CO of the involved organizations will determine which organization will conduct the single investigation. Reports of the investigation will be forwarded to the Commanding General, Marine Corps Base, via any other interested organization, for an endorsement indicating the latter's action(s) in relation to the investigation. All reports will be forwarded to the Commanding General, MCCDC (C 052) for processing.

2. Distant Interest. When an incident requiring an investigation occurs at a place distant from Quantico, VA, the normal convening authority will refer the matter to the CO of the Marine Corps activity located closest to the site of the incident, requesting that an

investigation be conducted. This should be done by message with the activity's parent command and info addressee, e.g., requests to I-I staffs should info the Commanding General, 4th Marine Division. The request will contain all available information such as time, place, and nature of the incident; full names, grades, social security numbers, and leave status of personnel involved; and any other information available which is considered pertinent to the investigation.

7006. INVESTIGATING OFFICERS. Investigating officers will be guided by the pertinent provisions of the JAG Manual. In addition, the following policies will be observed:

1. Investigating officers desiring to interview personnel or visit areas under the control of organizations other than their own will inform that organization's commander (normally through the organization's adjutant) of their presence and purpose in the area.
2. Investigating officers desiring to interview patient or staff personnel of the Naval Medical Clinic, Quantico, or to obtain diagnosis and prognosis reports therefrom, will report to the Director, Administrative Services, present their appointing order, and state what services are desired. The Director, Administrative Services, is requested to direct them to the Chief, Patient Administrative Services, or others, as appropriate. Visiting wards or offices without prior permission from the above officer is prohibited. Requested diagnosis reports will be mailed or held for pickup.

7007. REFERRAL TO RESPONSIBLE PERSON. When any servicemember or civilian employee is recommended to be held responsible for the loss, damage, or destruction of government property by reason of their fault or negligence, as defined in **MCO P4400.150**, Marine Corps **Consumer-Level Supply Policy Manual**, and the convening/reviewing authority concurs in such recommendation, the entire matter will be referred in writing to such person for a statement as to whether they accept or disclaim the finding. Should they accept the finding, they will state whether they consent (in whole or in part) or decline to voluntarily reimburse the government for the amount of loss or damage. Prior to the execution of such statement, however, the servicemember will be afforded the opportunity to consult with a judge advocate.

7008. ADVICE ON INVESTIGATIVE PROCEDURES. The Staff Judge Advocate (SJA) is the technical advisor on matters pertaining to investigations. **CO's**, unit legal officers, and investigating officers of organizations may make informal requests for advice on investigative procedures when necessary. Initial contacts should be made with the legal administrative officer.

7009. RECORDS OF PROCEEDINGS. Reports of investigations will be reviewed by the staff section cognizant of the matter under investigation. Action will be taken pursuant to section 0210 of the JAG Manual. Those involving findings of negligence, claims for or against the government, misconduct/line of duty investigations, or where disciplinary action is taken or contemplated will be forwarded with appropriate comments to the Commanding General, MCCDC (C 052). Marine Corps Accident and Injury Reports will also be forwarded to the Commanding General, MCCDC (C 052) for approval and further forwarding to the JAG of the Navy. No fact-finding body need be convened and no report need be forwarded to the JAG concerning misconduct and line of duty investigations when, in the opinion of a medical officer (or representative of a medical department), as concurred in by the CO, the injury is not likely to result in a permanent disability and was incurred **"in the line of duty"** and **"not** as a result of the member's own misconduct." Appropriate entries to this effect must be made in the servicemember's health or dental record. (See Manual of Medicine, Articles 15-32 and/or 16-35.)

7010. DISPOSITION OF RECORD. The distribution of investigative reports depends upon the type of investigation conducted. Precise routing instructions are in section 0211 of the JAG Manual. The following should be used as a guide:

1. Reports of injuries and deaths are forwarded to the JAG of the Navy via the Commanding General, MCCDC (C 052). Where records or reports involve Marine Corps personnel and are of a sensitive nature, they will be forwarded via CMC (JA). Sufficient copies should be included for each via addressee.
2. If the investigation concerns a line of duty/misconduct determination and contains the basis of a claim against or for the government, it will be forwarded to the JAG via the CO, Naval Legal Service Office, Washington Navy Yard, Washington, DC 20374, and the Commanding General, MCCDC (C 052). If the investigation concerns a line of duty/misconduct determination and contains the basis of a claim against the government, per the JAG Manual, Chapter XXI, it will be forwarded to the JAG via the CMC (MHP-40) and the Commanding General, MCCDC (C 052). If the investigation does not relate to a line of duty/misconduct determination, but contains the basis of a claim against or for the government, it will be forwarded to the Commanding Officer, Naval Legal Service Office, Washington Navy Yard, Washington, D.C. 20374 via the Commanding General, MCCDC (C 052). If the investigation does not relate to a line of duty/misconduct determination, but contains the basis for a personnel claim against the government, it will be forwarded to the CMC (MHP-40) via the Commanding General, MCCDC (C 052). Reports of injury to naval

personnel under circumstances indicating a possible third-party liability claim shall be forwarded to the JAG via the Commandant of the Naval District in which the incident occurred.

7011. CLAIMS FOR OR AGAINST THE GOVERNMENT. An investigator does not have any authority to settle claims and should carefully advise all interested persons of this limitation of power. In addition to the conduct of the investigation, the investigator is responsible for providing all possible claimants with the correct claims forms (either Standard Form 95 or DD Forms 1842 and 1845).

7012. CIVIL CHARGES IN CLAIMS CASES. If, in the course of an investigation of an incident involving possible claims against or in favor of the government, it becomes evident that an operator of government equipment has received a citation, subpoena, or other notice of arrest from civil authorities, based upon the incident in question, the investigator will report such fact to the SJA.

7013. ACCIDENTS INVOLVING GOVERNMENT VEHICLES. The MCCDC Claims Investigating Officer will investigate some accidents involving a government vehicle or privately-owned vehicles. In most cases, the organizational commander of the government vehicle involved will conduct the required JAG Manual investigation and combine the claims aspects of the case.

7014. PERSONNEL CLAIMS. Military personnel claims, other than household goods claims, cognizable under 31 USC, sections 240-243, Military Personnel and Civilian Employees Claims Act of 1964, JAG Manual, sections 2101-2129, will be initially investigated by the organization to which the claimant is assigned. All personnel claims will be forwarded to the CMC (MHP-40) via the Commanding General, MCCDC (C 052) for further action and settlement. Household goods claims are processed through the Traffic Branch, Supply Division.

7015. RELEASE OF THIRD PARTIES. No member of this Command or a dependent thereof who has received medical treatment should release or otherwise settle the liability of a negligent third party who, by their negligence, has caused injury to such member or dependent until after consultation with a legal assistance officer.

7016. DISCLOSURE FORMS. All investigations will have attached to them a disclosure form (see JAG Manual Appendix A-3-b).

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CHAPTER 8

LEGAL ASSISTANCE

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CHAPTER 8

LEGAL ASSISTANCE

8000. SCOPE. This Chapter sets forth a guide to the services and functions of the Legal Assistance Officer, Office of the Staff Judge Advocate (OSJA). Services of the Legal Assistance Officer are rendered in an individual capacity as a lawyer and are not the official acts of an officer or agent of the Department of the Navy. Except in unusual circumstances, legal services will be rendered only at the Legal Assistance Office.

8001. SERVICES PROVIDED. The Legal Assistance Officer will provide military personnel and their dependents, including retired personnel of the armed forces, with advice and assistance in preparing wills, estate plans, powers of attorney, separation agreements, adoption and guardianship petitions, name change petitions, promissory notes, and small claims court documents. The Legal Assistance Officer will also advise eligible recipients on the legal aspects of marriage and marital problems, divorce, immigration and naturalization, indebtedness, taxation, real estate transactions, insurance, torts (accidents), consumer complaints, automobile titles and licensing, civilian criminal matters, and landlord/tenant problems. Notary public service is also provided.

8002. SERVICES NOT PROVIDED. The Legal Assistance Officer does not provide assistance regarding disciplinary matters under the Uniformed Code of Military Justice (UCMJ), the conduct of the Judge Advocate General (JAG) Manual investigations or administrative hearings, Command traffic court citations, or Article 138 complaints. The Legal Assistance Officer is also precluded from rendering advice where the client's interests are opposed to the interests of the U.S. Government. These matters are handled by the SJA or as otherwise provided in this Manual. Finally, no legal assistance is provided where the advice would result in a purely personal gain for the recipient; i.e., incorporation of a business, obtaining of a patent, etc.

8003. ACTION BY UNIT LEGAL OFFICERS. Personnel desiring assistance of the Legal Assistance Officer will first seek the assistance of their respective unit legal officers. The unit legal officer will ascertain the nature of the problem and determine the necessary course of action. Consultation by the unit legal officer with the Legal Assistance Officer is invited. If the unit legal officer determines that the problem is of such a nature as to require the services of a lawyer, that individual will make the necessary arrangements for an appointment and will so inform the person of the date and hour of the appointment.

8004. PROCESSING OF REQUESTS FOR ACTION REGARDING VIOLATIONS OF THE CIVIL RIGHTS ACT

1. Per MCCDCO 5350.2, the Legal Assistance Officer has been designated to assist military personnel and their dependents in seeking relief from off-base discrimination and other violations of the Civil Rights Act of 1964.

2. Organizational legal officers are instructed to advise personnel who feel aggrieved under the Civil Rights Act of 1964 of the provisions of SECNAVINST 5350.5 prior to referring them to the Legal Assistance Officer.

8005. INSURANCE. The Legal Assistance Officer is designated the Command Insurance, Mutual Funds, and Securities Officer and, as such, is responsible for the certification of all agents prior to their being granted a permit for conducting business aboard this Command. Compliance with MCCDCO 5760.1 will materially assist in the equitable control of agents conducting business aboard this Command. Organizational legal officers are encouraged to consult with the Legal Assistance Officer in all insurance matters, particularly before making arrangements to have an insurance agent give a presentation aboard MCB, MCCDC. Any incident of insurance agents soliciting aboard MCB, MCCDC without being registered should be promptly reported to the Legal Assistance Officer.

SOP FOR LAW AND LEGAL MATTERS

CHAPTER 9

CIVIL AUTHORITIES

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SOP FOR LAW AND LEGAL MATTERS

CHAPTER 9

CIVIL AUTHORITIES

9000. SCOPE. This Chapter sets forth the necessary action for delivery of military and civilian personnel to civil authorities, service of civil process and subpoenas, and instructions for officers representing their organizations in local courts.

9001. DELIVERY TO CIVIL AUTHORITIES

1. Delivery of military personnel to civil authorities will be effected per the Judge Advocate General (JAG) Manual, Chapter XIII, and the provisions of this Manual. Normally, the delivery of military personnel will only be effected by the Legal Assistance Officer at the Legal Assistance Office.

2. All requests for delivery of military personnel to civilian authorities for trial on criminal charges will be directed to the Legal Assistance Officer.

3. The Legal Assistance Officer, or representative, will inform the officer exercising summary court-martial jurisdiction over the requested individual of all the pertinent facts known regarding the case. The latter will advise the Legal Assistance Officer of the present whereabouts and disciplinary status of the requested individual, and whether they authorize delivery to civil authorities.

4. When the officer exercising summary court-martial jurisdiction over the requested individual authorizes delivery, such officer will ensure that the individual is properly attired in civilian clothes (preferably) or the uniform of the day. Such officer will further ensure that the individual is accompanied by an officer or SNCO when summoned by the Legal Assistance Officer. If it appears that the individual will not be returned to the Command within 24 hours, they should also have in their possession appropriate personal toilet articles. The delivery of the person concerned to civil authorities will be effected in the presence of the Legal Assistance Officer. At that time, the Legal Assistance Officer will have the requesting civil authorities execute the agreement required by the JAG Manual, Section 1305. No agreement form is necessary upon delivery of persons to Federal authorities.

9002. DELIVERY TO CIVIL AUTHORITIES OTHER THAN VIRGINIA OR FEDERAL AUTHORITIES. Any CO or other person who receives a request for delivery of a military person to a civil authority of a state or commonwealth, other than the Commonwealth of Virginia, will forward the request to the Legal Assistance Officer for disposition per the provisions of the JAG Manual, Section 1302.

9003. EFFECT OF DISCIPLINARY STATUS UPON DELIVERY. Upon presentation of a proper warrant, delivery of the person sought will normally be effected, except when disciplinary proceedings involving military offenses are pending or the requested person is undergoing a sentence of a court-martial. Before delivery of the requested person is refused for any reason, however, the officer exercising summary **court-martial** jurisdiction over the requested individual will report the full circumstances of the case to the Staff Judge Advocate (SJA) or the Legal Assistance Officer. When refusal of delivery is intended, the CO will report the circumstances to the JAG per the JAG Manual, Section 1310.

9004. ADMINISTRATIVE ACTION. The report to the CMC or Chief of Naval Personnel, as appropriate, concerning the delivery of Naval personnel per the JAG Manual, Section 1305, will be made by the SJA and Unit Diary (MMS). Upon delivery to civil authorities, appropriate entries will be made in the individual's SRB per **MCO P1070.12.**

9005. SERVICE OF CIVIL PROCESS AND SUBPOENAS ON MILITARY PERSONNEL

1. All requests for service of civil process and subpoenas emanating from local (Virginia) courts or from Federal courts on military personnel will be directed to the Legal Assistance Officer. The officer exercising summary court-martial jurisdiction will advise the Legal Assistance Officer of the present whereabouts of the individual concerned.
2. Where the process or subpoena issues from other than a Federal or Virginia civil authority, the person to whom the process is addressed will be advised per the JAG Manual, Section **1320b**, prior to permitting service.
3. Where service is authorized, it will be effected in the office of and in the presence of the Legal Assistance Officer or in the presence of a designated representative.
4. Process received by mail will be handled per the JAG Manual, Section 1320.

9006. SERVICE OF PROCESS AND DELIVERY IN CASE OF NONMILITARY PERSONNEL

1. In cases involving dependents and other civilians who are not Federal employees, civilian police will, upon entering the Command, notify the Provost Marshal of their intended function (arrest, summons, or subpoena) and request that a military police accompany them to the **civilian's/dependent's** residence or location.

2. Civilian police should be advised to contact the Director, Civilian Personnel Branch to arrange arrest or service of process on Federal civilian employees.

9007. REFUSAL OF SERVICE. Before service is refused, the officer exercising summary court-martial jurisdiction over the individual to whom it is addressed will report without delay the full circumstances of the case to the SJA, who will initiate action per the JAG Manual, Section 1320.

9008. COMMAND REPRESENTATIVE IN CIVIL COURTS

1. Military personnel are subject to Federal laws and military regulations, as well as the laws of the state, county, or municipality in which they are present when away from this Command. They may be arrested, confined, charged, and tried just as any other citizen.

2. Enlisted personnel should be counseled to inform their respective sergeant major/first sergeant as soon as possible of any instance where they have received a citation or any form of civil process which may require their appearance before a civilian judicial body. CO'S are requested to ensure that such individuals are granted leave or liberty to enable them to appear when required. **CO's** are further requested to ensure that such persons are accompanied to court by an officer. Should it be impractical for such a representative to accompany the Marine accused to court, the Legal Assistance Officer should be consulted.

3. Military attorneys are expressly forbidden to appear before civilian courts as attorneys for military personnel except when the JAG of the Navy or the Commandant of the appropriate naval district specifically designates one to appear on behalf of personnel being prosecuted as the result of incidents arising out of the performance of their official duties.

4. It is proper, however, for an officer to be present in court as a representative of the defendant's CO in order to assist the defendant in obtaining civilian counsel, as needed; offer to testify as to the defendant's character and military record; if requested, be available to explain relevant Marine Corps and Navy Department policies to the **judge**, if defendant requests such information; receive the defendant if released to the custody of the Marine Corps; and to report the result of the trial to the defendant's commanding officer. This type of assistance is the responsibility of the defendant Marine's CO.

9009. PROCEDURES. When military personnel are to be tried in district court, circuit court, or Federal district court within 50 miles of MCB, MCCDC, **CO's** will appoint an officer to accompany

defendants to court as unit representatives. The appointment of the unit representative to accompany a defendant to a court located beyond 50 miles from MCB, MCCCDC, is left to the discretion of the CO. Officers appointed to perform such duties will familiarize themselves with the instructions contained in paragraph 9011 and will conduct themselves accordingly.

9010. PRODUCTION OF OFFICIAL RECORDS. All requests for production of official records relative to court action will be referred to the SJA.

9011. INSTRUCTIONS FOR UNIT REPRESENTATIVES IN CIVILIAN COURTS

1. Prior to Trial. Officers assigned to accompany service members to civilian courts will be guided by the instructions outlined below in carrying out their duties:

a. Upon assignment and prior to going to court, obtain all available information within the unit regarding the facts of the case and discuss it with the defendant.

b. If it appears that there may be grounds for contesting the charges against the defendant or if charges of a serious nature are involved, advise the defendant to retain a civilian attorney. If the defendant specifies no choice of attorney, refer them to the Virginia State Lawyer Referral Service (800) 552-7977 for a list of attorneys who may be willing to take the case. Inform the defendant that unit representatives cannot act as their attorney in court.

c. Obtain a synopsis of the defendant's military record and ascertain what the defendant's superiors think of their character and value to the service. Inform the defendant that you will be available to testify upon their record and character if such testimony is desired.

d. Determine how much money the defendant has on hand, on the books, or otherwise available for payment of any possible fine.

e. Become familiar with current Marine Corps and Navy Department policies, particularly **MCO P1900.16D**, MARCORSEPMAN, paragraph 6210.6, regarding the discharge of enlisted personnel who are convicted of serious civilian offenses, and **MCO P5800.8B**, LEGADMINMAN, Chapter 3, "Courts-Martial Information."

f. If the defendant is confined in a civilian jail, they may normally be visited during regular visiting hours by making arrangements with the confining authority. Requests to visit confined defendants in cases of emergency other than normal working hours must be made to the sheriff of the county. Unit representatives have no authority to demand to see a prisoner.

g. When the defendant obtains civilian counsel, unit representatives will not attempt to interfere with the attorney's handling of the case. A representative may cooperate with the defendant's civilian counsel to the extent requested by that counsel, but such cooperation will not exceed the action authorized in this Manual except with the expressed permission of the CO.

2. Conduct in Court. When civilian counsel has been retained by the defendant, the unit representative will remain available to testify, if called, and to observe the proceedings in order to report the outcome of the trial to the CO. If civilian counsel has not been retained, the unit representative will conduct themselves as follows:

a. A unit representative has no official standing in the eyes of the court, and may take part in the proceedings only when invited to do so by the judge, and then only to the extent of the invitation. Anyone who fails to act with the proper degree of respect for the court and its dignity may be summarily punished by the court for contempt. Although it may be proper for a civilian attorney in a given case to attempt to arrange with a prosecuting attorney the acceptance of a plea to a lesser included offense or to dispose of the case out of court, a unit representative is expressly forbidden from doing so.

b. Should the matter arise, it is important that the unit representative inform the judge that Marine Corps policy forbids the Marine Corps from entering into any agreement to accept custody of the defendant on any terms established by the court which would impose obligations on Marine Corps officials to become part of a probation arrangement. Specifically, the Marine Corps cannot agree to submit reports to the court on future conduct of the defendant, to carry out any conditions of probation which involve performance of defendant's military duties, or to guarantee continued presence of the defendant within the jurisdiction of the court. Any known plans to transfer or deploy the defendant should be made known to the judge.

c. Under no circumstances will the unit representative express displeasure with the sentence awarded, nor attempt to bargain with the judge for a reduction therein. It must be remembered that, in performing unit representative duty, one is representing the Marine Corps in a situation which may have a serious effect not only on the service member and those who follow into that particular court, but also in establishing and maintaining cordial and cooperative relationships between the Command and nearby communities.

3. After Trial

a. After a conviction in a civilian court, an appeal may be taken to the next higher court in a meritorious case upon the giving of notice of intent to appeal, and the posting of bond to ensure the appearance of the defendant. Whether to take an appeal in a

particular case is a determination for the civilian attorney retained by the defendant. The unit representative should not attempt to advise the defendant on such a matter. If, however, there is reason to believe that a different result would be reached by a higher court, and the defendant has not obtained civilian counsel, the unit representative should assist the defendant in doing so immediately.

b. If necessary, the unit representative should assist the defendant in obtaining pay.

c. After trial, the defendant's CO should be informed of the results and of any promises made to the court regarding the payment of a fine or request for the return of the defendant for future proceedings.

d. Any criticism of the actions of a judge, clerk of the court, prosecuting attorney, or civilian attorney in a particular case will be directed only to the representative's CO and the SJA.

9012. PROCEDURES FOR REPOSSESSION OF MOTOR VEHICLES

1. Only the SJA or a designated representative can authorize repossession of automobiles located aboard this Command. **CO's** will refer all requests to the Legal Assistance Officer for disposition. The referral will be by telephone and will include the following information:

a. Name and address of the civilian firm contemplating repossession.

b. Name and address of the firm representative.

c. Name, rank, social security number, and unit of the service member who has possession of the automobile.

d. A determination whether the firm contemplating repossession has a court order authorizing repossession.

e. The anticipated date that the firm's representative will arrive aboard the Command. If a person contemplating repossession comes aboard MCCDC without prior telephone notice, that individual should be immediately referred to the Legal Assistance Officer.

2. Secured creditors will be referred to the Legal Assistance Officer for:

a. Verification of the identities of the parties.

b. Review of the validity of the security agreement.

- c. Determination of evidence of default.
 - d. Application of the Soldiers and Sailors Civil Relief Act.
3. After initial review by the Legal Assistance Officer, the secured party will be referred to the Provost Marshal, who will provide supervision of actual repossession to ensure that no breach of the peace occurs or is threatened.