

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION**

HUNTER DOSTER, *et al.*,

Plaintiffs,

v.

FRANK KENDALL, *et al.*,

Defendants.

No. 1:22-cv-00084
Hon. Matthew W. McFarland

DEFENDANTS' RENEWED MOTION TO DISMISS

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INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 12(h)(3), 23(c) and 60, Defendants ask this Court to dismiss this case in its entirety as moot, decertify the class, and dissolve the preliminary injunctions. On December 23, 2022, the President signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (“NDAA”). *See* Pub. L. No. 117-263, § 525, 136 Stat. 2395, 2571-72 (2022). Section 525 of the NDAA directed the Secretary of Defense, within 30 days, to rescind the August 2021 memorandum requiring Service members to receive a COVID-19 vaccine. On January 10, 2023, the requirement was rescinded. *See* ECF No. 100-1. The Department of Defense (DoD) and the Services have followed up with implementation guidance. For those who sought an exemption (the entire class), the Air Force has removed or will remove adverse actions in their record arising from a failure to receive a COVID-19 vaccine. Defendants have also made clear there is no intention of reinstating a similarly broad COVID-19 vaccination requirement in the foreseeable future.

Plaintiffs in this case seek only prospective declaratory and injunctive relief. Compl. at PageID 18–19 (Prayer for Relief), ECF No. 1. This case is moot because no Plaintiff or class member faces any ongoing or future harm from the now-rescinded mandate. The Middle District of Florida’s recent opinion is directly on point. *Colonel Fin. Mgmt. Officer v. Austin*, No. 8:21-cv-2429-SDM-TGW, 2023 WL 2764767, at *2 (M.D. Fla. Apr. 3, 2023). That court certified a class of Marines who sought religious exemptions from the COVID-19 vaccination requirement and issued a class-wide preliminary injunction similar to this case. *Id.* at *3. After the requirement was rescinded, that court concluded that the entire case is moot, explaining that “[b]y rescinding the mandate in accord with the 2023 NDAA, the Secretary of Defense removed the policy at which the requested relief was directed.” *Id.* at *2. For the same reasons, Plaintiff’s complaint is moot, and this case should be dismissed.

FACTUAL BACKGROUND

On August 24, 2021, the Secretary of Defense directed the Secretaries of the Military

Departments to ensure that all members of the Armed Forces were fully vaccinated against COVID-19. ECF No. 27-3. Shortly thereafter, the Secretary of the Air Force directed all Service members in the Department of the Air Force to be vaccinated. ECF No. 27-7. As with other vaccine requirements, the Department has guidance that establishes processes for seeking medical, administrative, and religious exemptions. *See* ECF Nos. 27-12, ¶¶ 3–9; 27-13, ¶ 3; 27-16, ¶¶ 3–4.

On December 23, 2022, the President signed the NDAA into law. Section 525 of the NDAA directed the Secretary of Defense, within 30 days, to rescind his August 2021 memorandum requiring vaccination of Service members for COVID-19. On January 10, 2023, the Secretary of Defense rescinded the requirement as directed. *See* ECF No. 100-1. The rescission memorandum directs that currently serving Service members who sought an exemption shall not be “separated solely on the basis of their refusal to receive the COVID-19 vaccination” and requires the Services to “update the records of such individuals to remove any adverse actions solely associated with denials of such requests.” *Id.* As relevant to this case, the Air Force and the National Guard Bureau subsequently issued implementation guidance. ECF Nos. 101-1, 105-1, 105-2. COVID-19 vaccination status is “no longer a barrier to service in” the Reserves or National Guard. ECF No. 105-2; *see also* 105-1.

On February 24, 2023, the Deputy Secretary of Defense issued further guidance clarifying that the rescission of the COVID-19 vaccination requirement “also rendered all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023,” including, but “not limited to, any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.” Feb. 24, 2023, Deputy Secretary of Defense Memo (Ex. 1). Other than when “required for travel to, or entry into, a foreign nation,” the guidance makes clear “commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member’s COVID-19 immunization status in making deployment, assignment, and

other operational decisions.” *Id.*; *see also* ECF No. 101-3 (removing travel restrictions that differentiate based on COVID-19 vaccination). Now “there is no COVID-19 vaccination requirement for Service members” and the “Services no longer require COVID-19 vaccination for accession to, or retention in, their respective Military Services,” including “all new military accessions—both enlisted and officers—as well as cadets and midshipmen in officer commissioning programs.” Cong. Test. of G. Cisneros, Under Secretary for Personnel & Readiness (Feb. 28, 2023) (Ex. 2). If a commander wishes to require COVID-19 vaccination, that request must be approved by the Assistant Secretary of Defense for Health Affairs, and any new requirements “will be made judiciously and only when justified by compelling operational needs and will be narrowly tailored as possible.” Ex. 1.

For individuals who sought an exemption, including Plaintiffs and members of the class in this case, the Department of the Air Force will remove past adverse actions based on a refusal to receive the COVID-19 vaccine. Sec’y of Air Force Memo. (Feb. 24, 2023) (Ex. 3). The Secretary of the Air Force has directed officials to remove “Letters of Admonishment, Counseling, or Reprimand, and Records of Individual Counseling.” *Id.* (for actions involving other misconduct, the action “will be redacted to remove all language associated” with vaccine refusal and the commander “will make new determinations” on the action “without consideration” of the vaccine refusal).

“Nonjudicial punishments issued solely for vaccine refusal after requesting an exemption will be set aside in their entirety.” *Id.*¹ (where the nonjudicial punishment also addressed other misconduct, the vaccine refusal portion will be set aside and a commander will “reassess for appropriateness” “the remainder of the nonjudicial punishment”). Individuals with “Referral Performance Reports issued solely for vaccine refusal after requesting an exemption . . . will have the referral report removed from

¹ “Set aside occurs when the punishment, or any part or amount thereof, whether executed or unexecuted, is removed from the record and any rights, privileges, pay, or property affected by the relevant portion of the punishment are restored.” AFI 51-202, *Nonjudicial Punishment*, ¶ 5.7, <https://perma.cc/CPK5-BDR4>.

the member's personnel record and replaced with a statement of non-rated time." *Id.* ("where the referral report addresses additional misconduct, the report will be redacted to remove all language associated with" vaccine refusal and the Performance Report reassessed to determine if it should remain a referral). "Promotion Records will be corrected . . . to remove or redact, as appropriate, all adverse actions related to the member's refusal to receive the COVID-19 vaccine." *Id.* "Promotion Propriety Actions will continue processing" for "Secretarial action" and "[c]urrent involuntary discharge proceedings will be terminated . . . if the basis was solely for refusal to receive the COVID-19 vaccine." *Id.* ("If there are additional circumstances supporting discharge, commanders should make a determination as to whether to continue discharge proceedings").

Based on these developments, three Circuits have already held that requests for injunctive relief against enforcement of the military's COVID-19 vaccination requirement are moot. Two separate panels in the Ninth Circuit concluded that the rescission mooted Service members' appeals from denial of preliminary injunctions against enforcement of the requirement. *Short v. Berger*, Nos. 22-15755, 22-16607 (9th Cir. Feb. 24, 2023), and *Dunn v. Austin*, No. 22-15286 (9th Cir. Feb. 27, 2023). The Eighth Circuit explained, in dismissing an appeal in a similar posture, that the "rescission of the COVID-19 vaccination mandate, as directed by the [NDAA], provides the [plaintiffs] all of their requested preliminary injunctive relief and renders this appeal moot." *Roth v. Austin*, 62 F.4th 1114, 1119 (8th Cir. 2023); *id.* at 1119–20 (concurrence). The D.C. Circuit also dismissed appeals from the denial of preliminary injunctions. *Navy SEAL 1 v. Austin*, No. 22-5114, 2023 WL 2482927, at *1 (D.C. Cir. Mar. 10, 2023) (per curiam) *rehearing en banc denied*, No. 22-5114, 2023 WL 2795667 (D.C. Cir. Apr. 4, 2023); *Creaghan v. Austin*, No. 22-5135, 2023 WL 2482927, at *1 (D.C. Cir. Mar. 10, 2023).

District courts have likewise held that challenges to the COVID-19 vaccination requirement are now moot. As indicated above, the Middle District of Florida previously issued a class-wide preliminary injunction covering Marines who submitted a religious accommodation request. *See Col.*

Fin. Mgmt. Officer v. Austin, No. 8:22-cv-1275-SDM-TGW, 2022 WL 3643512, at *5 (M.D. Fla. Aug. 18, 2022) (certifying class and granting preliminary injunction), *appeal filed*, No. 22-13522 (11th Cir. Apr. 28, 2023). But after the rescission, that court found that the “challenged and preliminarily enjoined mandate no longer exists, and the issue unifying the injunctive class no longer exists.” *Col. FMO*, 2023 WL 2764767, at *3. Since that preliminary injunction was on appeal, the court issued an indicative ruling under Rule 62.1 that on remand, it would “dissolve the preliminary injunctions, [] de-certify the class of Marines, and [] dismiss the complaints as moot.” *Id.*

Other courts have come to similar conclusions. *See Alvarado v. Austin*, No. 1:22-cv-876(AJT-JFA), 2023 WL 2089246, at *3 (E.D. Va. Feb. 17, 2023) (“requests and any relief therefrom are now stale given the Rescission Memo”); *Chancey v. Biden*, No. 1:22-cv-110, ECF No. 32 (N.D. Fla. Feb. 14, 2023) (dismissing case challenging military COVID-19 vaccine requirement as moot). And in other cases, plaintiffs voluntarily dismissed their claims after the rescission. *See Oklahoma v. Biden*, No. 5-21-cv-01136-F, ECF Nos. 77 & 78 (W.D. Okla.); *Church v. Biden*, No. 21-2815, ECF No. 43 (D.D.C.); *Roth v. Austin*, 8:22-cv-3038-BCB-MDN, ECF Nos. 104 & 105 (D. Neb.). Every court to have ruled on the question has found that challenges to the COVID-19 vaccination requirement are moot.

PROCEDURAL BACKGROUND

On February 16, 2022, 18 plaintiffs filed a complaint on behalf of themselves and a putative class challenging DoD’s now-defunct COVID-19 vaccination mandate, bringing claims under the Religious Freedom Restoration Act (“RFRA”) and the First Amendment. Compl., ECF No. 1. Plaintiffs asked this Court to issue a preliminary injunction, “issue a declaration that the challenged orders are unconstitutional and illegal under RFRA and/or the First Amendment,” “order timely and good faith processing of [each] accommodation request,” “order Defendants to grant Plaintiffs’ accommodation requests pursuant to RFRA and the First Amendment,” “certify a class,” award “costs . . . including reasonable attorney fees,” and grant “[s]uch other relief as this Court shall deem just and

proper.” *Id.* at PageID 19. On March 31, 2022, the Court granted in part Plaintiffs’ motion for a preliminary injunction, enjoining Defendants from “taking any disciplinary or separation measures against the Plaintiffs . . . for their refusal to get vaccinated for COVID-19 due to their sincerely held religious beliefs,” “on the basis of this lawsuit[,] or their request for religious accommodation from the COVID-19 vaccine.” ECF No. 47, at PageID 3203–04. Defendants appealed on March 27, 2022.

On July 14, 2022, the Court certified a class and entered a class-wide temporary restraining order, ECF No. 72; the Court later issued a class-wide preliminary injunction. ECF No. 77. Defendants appealed on August 15, 2022, ECF No. 82, and moved to stay the class-wide injunction pending appeal, ECF No. 83. The Court denied the motion to stay, but modified the class definition and scope of the injunction. ECF No. 86. Defendants answered the complaint, ECF No. 78, and the parties began discovery. Meanwhile, in the Sixth Circuit, a panel generally affirmed the individual and class-wide injunctions. *Doster v. Kendall*, 54 F.4th 398 (6th Cir. 2022). After the NDAA was signed and the COVID-19 requirement rescinded, Defendants requested rehearing *en banc* seeking “vacatur of the [panel] opinion and of the district court’s preliminary injunctions on the ground that events postdating the opinion have now mooted the appeal and the preliminary injunctions.” *Doster v. Kendall*, Nos. 22-3497/3702, 2023 WL 2966353, at *1 (6th Cir. Apr. 17, 2023) (en banc). The original panel “concluded that the district court should review this mootness question in the first instance” and declined to vacate the opinion. *Id.* The full court declined to rehear the appeal *en banc*. *Id.*

On March 3, 2023, this Court *sua sponte* stayed the case in its entirety pending the 6th Circuit’s decision on Defendants’ pending requests. Mar. 3, 2023 Min. Order. This Court has now lifted the stay “solely as it pertains to briefing the issue of mootness.” Apr. 18, 2023 Min. Order.

ARGUMENT

I. The Court Should Dismiss This Action as Moot.

Plaintiffs’ claims are moot because the COVID-19 vaccine is no longer required, Plaintiffs’

prior adverse actions have been removed from their records, and none will face future discipline for past failure to get vaccinated. “Plaintiffs must maintain their personal interest in the dispute at all stages of litigation.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). “‘The jurisdiction of federal courts extends only to actual, ongoing cases or controversies. A case may become moot if, as a result of events that occur during pendency of the litigation, the issues presented are no longer ‘live’ or parties lack a legally cognizable interest in the outcome.’” *Hill v. Snyder*, 878 F.3d 193, 203 (6th Cir. 2017) (quoting *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 581 (6th Cir. 2012) (citations omitted)). A case is moot when, “as a result of events during the pendency of the litigation[,] the court’s decision would lack any practical effect.” *Resurrection Sch. v. Hertel*, 35 F.4th 524, 528 (6th Cir.) (en banc), *cert. denied*, 143 S. Ct. 372 (2022) (enforcement of mask mandate was moot when the State “rescinded the mandate” at issue).

“Legislative action ordinarily moots a case midstream, when a challenged provision is repealed or amended during the pendency of the litigation.” *Hill*, 878 F.3d at 204. “Legislative repeal or amendment of a challenged statute . . . usually eliminates this requisite case-or-controversy.” *Green Party of Tennessee v. Hargett*, 700 F.3d 816, 822 (6th Cir. 2012); *see also Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012) (affirming dismissal as moot when City revised challenged ordinance); *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 644 (6th Cir. 1997) (“[I]n the First Amendment context, the Supreme Court has routinely declared moot those claims effectively nullified by statutory amendment pending appeal.”); *Memphis Planned Parenthood, Inc. v. Sundquist*, 121 F.3d 708 (6th Cir. 1997) (table) (agreeing case was moot when challenges “have been effectively nullified by the recent amendment of the statute”).

“[W]hen a government fully repeals a challenged law, a case challenging that law is almost surely moot.” *Col. FMO*, 2023 WL 2764767, at *2 (quoting *Keister v. Bell*, 29 F.4th 1239, 1250 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 1020 (2023)); *see also Freedom From Religion Found., Inc. v. Abbott*, 58

F.4th 824, 832 (5th Cir. 2023) (when a statute or regulation is amended or repealed after plaintiffs bring a lawsuit challenging the legality of that statute or regulation, mootness is “the default.”); *Am. Bar Ass’n v. FTC*, 636 F.3d 641, 643 (D.C. Cir. 2011) (“a case must be dismissed as moot if new legislation addressing the matter in dispute is enacted while the case is still pending.”); *Bd. of Trs. of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019) (en banc) (“in determining whether a case is moot, we should presume that the repeal, amendment, or expiration of legislation will render an action challenging the legislation moot, unless there is a reasonable expectation that the legislative body will reenact the challenged provision or one similar to it”).

A judicial ruling as to whether the now-rescinded policy violated the First Amendment or RFRA would also be an impermissible advisory opinion. *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 715 (6th Cir. 2011) (“The ‘case or controversy’ requirement prohibits all advisory opinions, not just some advisory opinions and not just advisory opinions that hold little interest to the parties or the public.”); *see also Commodities Exp. Co. v. Detroit Int’l Bridge Co.*, 695 F.3d 518, 525 (6th Cir. 2012) (“Under Article III, the federal courts may exercise jurisdiction only if the parties have presented a live case or controversy. U.S. Const. art. III, § 2. We have no power to offer an advisory opinion, based on hypothetical facts.”).

A. All Requested Relief Is Now Moot.

There is no further relief for this Court to grant. Plaintiffs ask the Court to “issue a declaration that the challenged orders are unconstitutional and illegal under RFRA and/or the First Amendment,” “order timely and good faith processing of each accommodation request,” and “order Defendants to grant Plaintiffs’ accommodation requests pursuant to RFRA and the First Amendment.” This relief is unavailable after the rescission.

An order to “preclude Defendants from taking enforcement/punitive action against Plaintiffs or others similarly situated” “related to their religious accommodation request,” Compl. at PageID

18–19 (Prayer for Relief), would be meaningless since current policy not only prohibits further adverse action but also requires the removal from Plaintiffs’ and class members’ service records of previous adverse actions solely related to refusal to take the COVID-19 vaccine, *see* ECF Nos. 100-1, 101-1 (also requiring removal of any language associated with refusal take the vaccine if adverse action also addressed other misconduct). Moreover, the request for this Court to order “timely and good faith processing” and “grant[ing]” of religious accommodation requests, Compl. at PageID 19 (Prayer for Relief), is moot since there is no longer any COVID-19 vaccination requirement. *See Col. FMO*, 2023 WL 2764767, at *2 (holding the rescission “rendered superfluous the request” to process and grant religious accommodation requests).

Further, “none of the 18 named plaintiffs have any adverse actions (in accordance with the Secretary of the Air Force’s February 24, 2023 Memorandum) in their records at this time.” Decl. of A. Chaponis, ¶ 3 (Ex. 4). Although “[f]our plaintiffs . . . received Letters of Reprimand for refusal to follow the order to receive the COVID-19 vaccine . . . all [four] Letters of Reprimand were removed from the Service members’ records” on February 13, 2023. *Id.* So there is no further relief this Court could grant that would have any practical impact on the named Plaintiffs or their military careers.²

The same is true for members of the class. For those who requested exemptions, the COVID-19 vaccination policy has been rescinded “root and branch,” *Doster v. Kendall*, 48 F.4th 608, 615 (6th Cir. 2022), and there is no further injunctive relief for this Court to issue.³

² Two Plaintiffs, Connor McCormick and Alex Ramsperger both voluntarily complied with the COVID-19 vaccination requirement prior to its rescission. Ex. 4, ¶ 5. One Plaintiff, Adam Theriault, voluntarily separated from military service in April 2023 upon completion of his service obligation—his enlistment period ended and he did not seek to re-enlist. *Id.* ¶ 6. Two Plaintiffs have been promoted during the pendency of this litigation, including Hunter Doster who was promoted to First Lieutenant and Daniel Reineke who was promoted to Lieutenant Colonel. *Id.* ¶ 7.

³ Even if there are some class members who have not yet had adverse actions removed, that still would not be a basis to keep this suit alive. When a class is certified but not all members have yet received the benefit of a revised policy, a claim is still moot when the effect of the new policy “although slow, is inevitable.” *Hill v. Snyder*, 878 F.3d 193, 204 (6th Cir. 2017). Should Plaintiffs seek to keep this case

Plaintiffs’ request for declaratory judgment would also provide no meaningful relief. A declaration concerning the lawfulness of the rescinded requirement is moot for the same reasons the request for injunctive relief is moot. *See Golden v. Zwickler*, 394 U.S. 103, 109 (1969) (dismissing declaratory judgment action because there was no case or controversy of “sufficient immediacy and reality”); *see also Hewitt v. Helms*, 482 U.S. 755, 761 (1987). To the extent Plaintiffs seek a declaratory judgment concerning the lawfulness of *future* action, the Sixth Circuit has explained that requests for declaratory judgment are moot when there is “no reasonable possibility that [Defendants] will impose a new [vaccine] mandate with roughly the same exceptions as the one originally at issue here.” *Resurrection Sch.*, 35 F.4th at 530. Given the NDAA and the subsequent implementation by DoD and the Air Force, there is no reasonable possibility that Defendants will impose a new COVID-19 vaccination mandate with roughly the same scope and with “roughly the same exceptions as the one originally at issue here.” *Resurrection Sch.*, 35 F.4th at 530. Moreover, arguments based on hypothetical future readiness requirements are not ripe. *See, e.g., Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726, 732-33 (1998) (explaining that the “ripeness requirement” serves “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies” and to prevent unnecessary “judicial interference” (quoting *Abbott Lab’s v. Gardner*, 387 U.S. 136, 148-49 (1967))); *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 241 (1937) (providing that a party may not ask a court to “advise what the law would be upon a hypothetical state of facts”).

Defendants acknowledge that the Sixth Circuit suggested that even if claims for injunctive and declarative relief were moot, a live controversy might still exist because “RFRA permits damages

alive by pointing to any discharged Service members, former Service members who were involuntarily discharged for failure to get vaccinated against COVID-19 are not part of the class. *See Order Modifying Class Definition*, ECF No. 86 at PageID 5012 (limiting class to Service members of the Department of the Air Force who were “active-duty, active reserve, reserve” or otherwise “currently under command and could be deployed,” “as of July 27, 2022”); *see also* Plaintiffs’ Opposition to Stay Motion, ECF No. 85 at PageID 4651 (Plaintiffs arguing “the class is necessarily confined to those who met the class definition as of July 27, 2022”).

suits.” *Doster*, 54 F.4th at 426 (citing *Tanzin v. Tanvir*, 141 S. Ct. 486, 491 (2020)). But no live controversy remains in *this case* because is no request for damages. *See generally* Compl. While Plaintiffs may argue that their general prayer for “other relief as th[is] Court deems just and proper” implies a request for damages, the Sixth Circuit has explained that “a claim for damages, extracted late in the day from a general prayer for relief and asserted solely to avoid otherwise certain mootness, bears close inspection.” *Youngstown Publ’g Co. v. McKelvey*, 189 F. App’x 402, 408 (6th Cir. 2006) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997)) (cleaned up). The court in *Youngstown* declined to find that the phrase “such other relief that the Court deems necessary and appropriate” included a request for damages and held that “Plaintiffs’ ‘late in the day’ plea for damages ‘cannot genuinely revive the case.’” *Id.* at 407-08 (quoting *Arizona*, 520 U.S. at 71). Should Plaintiffs argue that the phrase “[s]uch other relief as this Court shall deem just and proper,” Compl. at PageID 19 (Prayer for Relief), implies a request for money damages, the Court should reject that argument as well.⁴

Even if Plaintiffs had sought damages, any claim would be barred by sovereign immunity. There is no “implied damages remedy under the Free Exercise Clause.” *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). And Courts of appeals that have considered the issue all agree that RFRA does not waive sovereign immunity for damages against the government or officers in their official capacities. *See Webman v. Fed. Bureau of Prisons*, 441 F.3d 1022, 1026 (D.C. Cir. 2006) (“RFRA does not waive the federal government’s sovereign immunity for damages”); *accord Davila v. Gladden*, 777 F.3d 1198, 1210

⁴ Plaintiffs have argued in the Court of Appeals that this case is not moot because some Plaintiffs in the Air Force Reserve seek backpay and retirement points. Pls.’ Resp. to Pet. For Reh’g *En Banc*, *Doster v. Kendall*, No. 22-3497 Doc. 48, at 1 (6th Cir.). But those claims for damages were not raised in the Complaint and are otherwise barred by sovereign immunity. Plaintiffs have not identified any waiver of sovereign immunity, and even if they had, this Court does not have jurisdiction over any claims for money damages greater than \$10,000. *See* 28 U.S.C. §§ 1346(a)(2), 1491. Moreover, Reservists generally do not have viable claims for pay and points for work not performed. *See Palmer v. United States*, 168 F.3d 1310, 1314 (Fed. Cir. 1999) (“a member who is serving in part-time reserve duty in a pay billet, or was wrongfully removed from one, has no lawful pay claim against the United States for unattended drills or for unperformed training duty”).

(11th Cir. 2015); *Oklevueha Native Am. Church of Hawaii, Inc. v. Holder*, 676 F.3d 829, 840 (9th Cir. 2012); *Tanvir v. Tanzin*, 894 F.3d 449, 458 (2d Cir. 2018), *aff'd sub nom.*, *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020).

Other authority supports the conclusion that RFRA does not waive sovereign immunity with respect to damages claims against the Government. In *Sossamon v. Texas*, the Court held that identical “appropriate relief” language in a related statute did not waive states’ sovereign immunity from money damages. 563 U.S. 277 (2011). More recently, the Second Circuit was unequivocal that “[a] plaintiff may not sue a federal officer in her official capacity for money damages, because such suit seeks money from the federal government, and sovereign immunity would bar recovery from the federal government absent an explicit waiver.” *Tanvir*, 894 F.3d at 461. The Supreme Court affirmed the Second Circuit’s decision in its entirety and did not disturb that sovereign immunity holding, but held only that “injured parties can sue Government officials in their *personal* capacities.” *Tanzin*, 141 S. Ct. at 490 (emphasis added). That limited holding cannot save Plaintiffs’ claim because no defendant here has been sued in their personal capacity, so there are no viable claims for damages in this case.⁵

B. No Exception to Mootness Applies.

No exception to mootness applies here because “[t]he rescission is ‘unambiguous,’ results

⁵ Counsel for Plaintiffs have argued in other cases that declaratory judgment could be the basis “under principles of res judicata and/or collateral estoppel” of “a follow-on [case for] monetary relief in individual cases against the Defendants.” Memo. in Opp. to Defs’ MTD, *Schelske v. Austin*, No. 6:22-cv-00049-H, ECF No. 96 (N.D. Tex. Feb. 15, 2023). Those principles would not apply because “the rule of differing capacities provides that a party appearing in an action in one capacity, individual or representative, is not bound by or entitled to the benefits of the rules of res judicata in a subsequent action in which he appears in another capacity.” *Mitchell v. Chapman*, 343 F.3d 811, 823 (6th Cir. 2003) ((internal quotation marks omitted)); see *Essex v. Cnty. of Livingston*, 518 F. App’x 351, 354 (6th Cir. 2013) (“an official-capacity claim is merely another name for a claim against the [agency]” not against the individual him or herself); *Goldstein v. Galvin*, 719 F.3d 16, 23 (1st Cir. 2013). If Plaintiffs seek a declaratory judgment to use as a basis for a *separate* lawsuit against a government official in his or her *personal capacity*, declaratory relief would not provide specific relief with the parties *in this case*. Moreover, Plaintiffs would face a high bar in any future lawsuit because “government officials are entitled to assert a qualified immunity defense when sued in their individual capacities for money damages under RFRA” which is a “powerful shield that protects all but the plainly incompetent or those who flout clearly established law.” *Tanzin*, 141 S. Ct. at 492 n* (citations and quotation marks omitted).

from Congress’s constitutional authority and not from an attempt by the Secretary of Defense to ‘manipulate jurisdiction,’ has resulted in consistent application, and has rendered superfluous the plaintiffs’ request for” injunctive and declaratory relief. *Col. FMO*, 2023 WL 2764767, at *2.

Voluntary Cessation. The voluntary cessation exception to mootness does not apply here. The challenged policy was unambiguously terminated at the direction of Congress (over the objection of DoD), and the exception thus does not apply. “Unlike a typical instance of voluntary cessation, the Secretary of Defense’s rescission of the COVID-19 vaccination mandate results not from the Secretary’s unilateral decision but from a higher authority, Congress, which enjoys the constitutional power under Article I, Section 8, ‘[t]o make Rules for the Government and Regulation of the land and naval Forces[.]’” *Id.*

Even if rescinding the mandate at the direction of Congress could be considered a “voluntary cessation,” that would still not be sufficient to overcome mootness. While “a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice” the “cessation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties,” as government ‘self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine.” *Hanrahan v. Mohr*, 905 F.3d 947, 961 (6th Cir. 2018). Thus, where “there is no indication that [a Defendant] will return to its previous policies” and when “defendants have represented that the new policies will remain in place,” the rescission of a challenged policy will moot the claim. *Id.*

Any argument that a policy *might* be reinstated at some unspecified point in the future is not enough to overcome mootness when “[t]here is simply no evidence in the record to suggest that this scenario is likely to occur.” *Green Party*, 700 F.3d at 823. “This dispute is therefore moot unless there is a decent chance that the defendant officials will not only impose a new [vaccine] mandate, but also roughly stick to the exceptions in the old one.” *Resurrection Sch.*, 35 F.4th at 529.

“Because in this action Congress has unambiguously renounced the mandate and has directed by statute a rescission of the mandate, recurrence of the military’s challenged conduct seems, absent any compelling evidence to the contrary, remote and implausible.” *Col. FMO*, 2023 WL 2764767, at *2. “The Secretary of Defense . . . has complied with Congress’s directive, and in the months following the rescission memorandum each branch has dutifully rescinded the COVID-19 vaccination requirement and implemented procedures to eliminate adverse administrative actions attending a service member’s earlier decision to decline COVID-19 vaccination.” *Id.*

Defendants, for their part, have made clear that they have no intention to reimplement the kind of broad, force-wide COVID-19 vaccination requirement challenged in this case. No commander is authorized to implement even a narrower COVID-19 vaccination requirement without clearance from the Assistant Secretary for Health Affairs, and any request will only be granted “when justified by compelling operational needs and will be as narrowly tailored as possible.” Ex. 1.

Defendants have also gone beyond what Congress required, for example, by directing the records of current Service members who sought an exemption to be updated and authorizing individuals previously assigned to the Individual Ready Reserve to return to a participating status. *See* ECF Nos. 105-1, 105-2.⁶ And on February 28, 2023, in testimony before Congress, the Under Secretary of the Air Force, Gina Ortiz Jones, confirmed that the Air Force has no plans to implement a broad COVID-19 vaccination requirement like the rescinded policy, and that “[b]arring unanticipated developments with COVID-19,” any narrower COVID-19 vaccination requirement in

⁶ Plaintiffs have argued that records in the Automated Military Justice Analysis & Management System (AMJAMS) means this case is not moot. Pls.’ Mot. to Supplement the Record, *Doster v. Kendall*, No. 22-3497, Doc. 62-1 (6th Cir. Mar. 21, 2023). But AMJAMS is an internal-facing system, accessible only by authorized legal personnel to track disciplinary cases within the Air Force Judge Advocate General’s Corps, and those records are considered attorney work product, subject to limited release. Decl. of J. Hartsell, ¶ 4 (Ex. 5). “AMJAMS entries showing that a member had an adverse action that was later rescinded would not be authorized for release in a background check and would therefore not be used in making promotion decisions” or “career or assignment decisions,” or “otherwise released to outside agencies as part of a background check for existing derogatory data.” *Id.* ¶ 10.

the Air Force “will be rare and if considered, ... will receive appropriate review at the general officer level.” Feb. 28, 2023 Test. of G. Ortiz Jones, Under Secretary of the Air Force (Ex. 6).⁷

Against this backdrop of Congressional action, Secretary of Defense rescission, and robust implementation guidance, Plaintiffs have provided no evidence to suggest that the same kind of COVID-19 vaccination requirement will be reinstated, no evidence that they will once again be subject to that same kind of requirement, and no evidence that any religious accommodation request they might seek regarding a hypothetical new requirement will be denied.⁸

Capable of Repetition. Plaintiffs may argue that this case is not moot because the mandate is “capable of repetition yet evading review.” *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007). “The exception applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.* (citation omitted). “The party asserting that this exception applies bears the burden of establishing both prongs.” *Lawrence v. Blackwell*, 430 F.3d 368, 371 (6th Cir. 2005). Plaintiffs cannot carry their burden here.

The relevant inquiry under the evading-review prong is “whether ‘the challenged activity is *by its very nature short in duration*, so that it could not, or probably would not, be able to be adjudicated while fully live.’” *Pharmachemie B.V. v. Barr Lab’ys, Inc.*, 276 F.3d 627, 633 (D.C. Cir. 2002) (quoting *LaRouche v. Fowler*, 152 F.3d 974, 978 (D.C. Cir. 1998)); *see also, e.g., Bayou Liberty Ass’n, Inc. v. U.S. Army Corps of Eng’rs*, 217 F.3d 393, 399 (5th Cir. 2000) (considering whether the challenged action was “*inherently* capable of evading review” (emphasis added)). The military requires a number of vaccines

⁷ The NDAA, implementation policies, and unambiguous assurances from officials are what differentiates this case from *Speech First, Inc. v. Schlissel*, where a court held that a change in university policy was not enough to moot a case when officials had not made “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” 939 F.3d 756, 770 (6th Cir. 2019).

⁸ To the extent Plaintiffs argue that this case is not moot because Defendants maintain that their actions were lawful, “the government need not concede unlawful conduct to moot an action by rescission of the challenged conduct.” *Col. FMO*, 2023 WL 2764767, at *2.

and those requirements have been in place for decades, so a vaccination requirement is not “by its very nature short in duration.” *Pharmachemie*, 276 F.3d at 633.

As to the second prong, there is no “reasonable expectation” that any across-the-board COVID-19 vaccination requirement like the one challenged here will be implemented again, that these same Plaintiffs will be subject to it, or that any potential religious accommodation request would be denied. All evidence, in fact, points the other direction. The “recurrence of the military’s challenged conduct seems . . . remote and implausible.” *Col. FMO*, 2023 WL 2764767, at *2; *Ramsek v. Beshear*, No. 3:20-cv-00036-GFVT, 2021 WL 5098687, at *5 (E.D. Ky. Nov. 2, 2021) (dismissing entire case challenging constitutionality of Kentucky Governor’s COVID-19 restrictions on mass gatherings as moot after the order was rescinded). DoD has also made clear that the challenged COVID-19 vaccine is not likely to recur. Ex. 1.

In short, Plaintiffs have not shown that any future RFRA or First Amendment challenge to a hypothetical COVID-19 vaccination requirement will evade judicial review. If history is any guide, parties who claim their religious rights have been violated by a military vaccination requirement can seek and, if warranted, receive timely relief in federal courts. Religious challenges to the COVID-19 vaccination have been heard in dozens of district courts and at least five Courts of Appeals. And religious accommodation cases were the subject of *two* orders from the Supreme Court. Nothing in that record suggests that if Defendants implement another force-wide COVID-19 vaccination requirement—and Plaintiffs are subject to that requirement, *and* the new requirement substantially burdens their religious beliefs, *and* they submit religious accommodation requests, *and* those requests are denied—that any potential future claim would evade judicial review.

Statute of Limitations for Courts-Martial. Plaintiffs argued to the Sixth Circuit that their claims are not moot despite the rescission because the military *might* pursue criminal charges under the Uniform Code for Military Justice (“UCMJ”) for past failure to comply with a lawful order to receive

a COVID-19 vaccine. Pls.’ Resp. to Pet. For Reh’g *En Banc*, No. 22-3702, Doc. 63 at 8 (6th Cir. Mar. 13, 2023) (citing *Ramsek v. Beshear*, 989 F.3d 494, 500 (6th Cir. 2021)). But no facts support this speculative argument. No Service member in the Department of the Air Force “has been court-martialed for their refusal to receive a COVID-19 vaccine under the now-rescinded mandate.” Ex. 5, ¶ 6. Both the Secretary of Defense and of the Air Force have ordered the removal of records of “adverse action solely associated with denials” of exemption requests. ECF Nos. 100-1, 101-1.

Ramsek otherwise weighs in favor of a mootness dismissal. In that case, Governor Beshear of Kentucky sought to curb the spread of COVID-19 by issuing an “Order prohibiting ‘mass gatherings.’” *Ramsek*, 989 F.3d at 496. The district court eventually granted a preliminary injunction against various aspects of the Order. *Id.* at 497–98. While that preliminary injunction was on appeal, the Governor rescinded the Order and “asserted that he would not enforce the Order against those engaging in expressive conduct.” *Id.* at 498. Based on the rescission and assurances from the Governor, the Sixth Circuit dismissed the appeal as moot. *Ramsek*, 989 F.3d at 500. However, the court explained that the underlying case might not be fully moot because while the Court of Appeals “accept[ed] Governor Beshear’s representation that he will not enforce the Order against Ramsek” or any others who engaged in expressive conduct that violated the Order, the panel stated that “it [was] not clear that Governor Beshear has the authority to control prosecution decisions” and perhaps the “Kentucky State Police seemingly could file a criminal complaint and seek to arrest Ramsek for a past violation on its own accord.” *Id.* The court dismissed the appeal as moot but given “the uncertainty over these various underlying questions surrounding the threat of prosecution,” the court “withh[e]ld judgment on whether the case as a whole is moot” and remanded for further proceedings. *Id.* On remand, plaintiffs argued against mootness and asked the court to extend “the previously entered injunction . . . until the statute of limitations period runs.” *Ramsek*, 2021 WL 5098687, at *4 n.1. The court dismissed the entire case as moot because the Governor had already assured that insofar as was

within his control, no one would be prosecuted. *Id.* And to the extent plaintiffs were concerned about future actions of hypothetical non-parties, they were not before the Court. *Id.*

The district court's analysis in *Ramsek* applies with even more force here. Unlike the governor, Defendants here have the authority to limit prosecutorial discretion for UCMJ actions, and they have represented unequivocally that they will not pursue *any* adverse action solely based on a past failure to follow an order to receive a COVID-19 vaccine against anyone who requested an exemption. A hypothetical, unfounded concern of future prosecution is not enough to overcome mootness.

II. The Court Should Decertify the Class and Dissolve the Injunctions.

The case should be dismissed in its entirety as moot. But even if the case were not entirely moot, the Court should decertify the class and dissolve the preliminary injunctions because the class no longer has a present injury and does not face irreparable harm.

Class Certification. The District Court has a “continuing obligation to ensure that the class certification requirements are met, and . . . to alter or amend the certification order as circumstances change.” *Randleman v. Fid. Nat’l Title Ins. Co.*, 646 F.3d 347, 352 (6th Cir. 2011); *see* Fed. R. Civ. P. Rule 23(c)(1) (a class certification order “may be altered or amended before final judgment”). The class here should be decertified because the common questions that formed the basis of the class are no longer relevant to the class as a whole. “[T]he issue unifying the injunctive class no longer exists” now that “[t]he challenged and preliminarily enjoined mandate no longer exists.” *Col. FMO*, 2023 WL 2764767, at *3. The Sixth Circuit held two common questions existed for the class: “Does the Air Force have a uniform policy of relying on its generalized interests in the [COVID-19] vaccine mandate to deny religious exemptions regardless of a [S]ervice members’ individual circumstances? And does it have a discriminatory policy of broadly denying religious exemptions but broadly granting secular ones?” *Doster*, 54 F.4th at 406. The court went on to state that “[a] ruling for the class [] would permit uniform injunctive relief against the allegedly illegal policies.” *Id.* But, even assuming, *arguendo*, that court was

correct, there is no longer any COVID-19 vaccination requirement and those who have religious objections to the available COVID-19 vaccines no longer need to seek an exemption.

The purported class-wide harms also no longer apply. The Sixth Circuit found commonality and typicality, explaining that “the coerced violation of religious beliefs” by requiring the COVID-19 vaccine or not approving a religious exemption request “irreparably harms a class member in the same way that it irreparably harms a Plaintiff.” *Doster*, 54 F.4th at 441. But again assuming, *arguendo*, the court ruled correctly, there is no longer any possible coercion because the COVID-19 vaccination policy no longer exists. In *TransUnion LLC v. Ramirez*, the Supreme Court held that thousands of putative class members could not be included in any claim for relief based on a failure to follow proper procedures because “Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.” 141 S. Ct. at 2208 (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2106) (Roberts, C.J., concurring)). Many of the class members in this case never suffered any adverse actions and are now no longer at risk of any alleged future harm. The class as currently defined is thus overly broad and should be decertified.

If Plaintiffs argue that some class members have unique circumstances and are still harmed by the now-rescinded mandate, or that the current policies do not do enough for some subset of class members, the currently certified class is not the proper vehicle to adjudicate those individual claims because any such circumstances are likely to involve unique facts and legal issues—not facts or legal issues common to the class as a whole. “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class,” and not “when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011).⁹

⁹ At the very least, the claims of the current class representatives should be dismissed as moot since they no longer have a cognizable injury. If Plaintiffs claim that some unnamed class members still have

Preliminary Injunctions. The Court should also dissolve the preliminary injunctions. “To obtain modification or dissolution of an injunction, a movant must demonstrate significant ‘changes in fact, law, or circumstance since the previous ruling.’” *In re Ohio Execution Protocol Litig.*, No. 2:11-cv-1016, 2017 WL 3276017, at *2 (S.D. Ohio Aug. 2, 2017), *supplemented*, No. 2:11-cv-1016, 2017 WL 5146293 (S.D. Ohio Oct. 17, 2017) (quoting *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 414 (6th Cir. 2012)). The rescission of the COVID-19 vaccination requirement is a significant change. *See, e.g., Log Cabin Republicans v. United States*, 658 F.3d 1162, 1166–68 (9th Cir. 2011) (vacating judgment and injunction); *Doe 2 v. Shanahan*, 755 F. App’x 19 (D.C. Cir. 2019) (dissolving injunction in light of changed military policy); *Wyatt ex rel. Rawlins v. Poundstone*, 941 F. Supp. 1100, 1108 (M.D. Ala. 1996) (indicative ruling that preliminary injunction was moot). Neither the named Plaintiffs nor the class are likely to succeed on the merits of their claims because, as explained above, their claims are moot.

Plaintiffs also cannot show any current substantial burden on their beliefs, nor any threat of irreparable harm, because there is no COVID-19 vaccination requirement and no longer any restrictions on travel (other than potential foreign entry requirements), deployment, training, or duty assignments based on vaccination status. There is no longer “substantial pressure on a religious objecting service member to obey the COVID-19 vaccination order and violate a sincerely held religious belief.” *Doster v. Kendall*, 596 F. Supp. 3d 995, 1020 (S.D. Ohio 2022). The standards for a preliminary injunction are no longer met, and the Court should dissolve the injunctions.

CONCLUSION

For the foregoing reasons, Court should decertify the class, dissolve the preliminary injunctions, and dismiss this case as moot.

viable claims, “the Court is [not] required to consider unnamed class members’ potential claims in the abstract.” *Tate v. Hartsville/Trousdale Cnty.*, No. 3:09-0201, 2010 WL 4822270, at *1 (M.D. Tenn. Nov. 22, 2010). Plaintiffs should identify new representatives and seek to certify a narrower class. *Id.*

Dated: May 2, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2023, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Zachary A. Avallone

Zachary A. Avallone

Exhibit 1



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

FEB 24 2023

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Guidance for Implementing Rescission of August 24, 2021 and November 30, 2021
Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed
Forces

In today's rapidly changing global security environment, vaccines continue to play a critical role in assuring a ready and capable force that is able to rapidly deploy anywhere in the world on short notice. Department leadership is committed to ensuring the safety of our Service members and will continue to promote and encourage vaccinations for all Service members along with continued use of other effective mitigation measures. This includes monitoring changing public health conditions, relevant data, and geographic risks; and updating policies and processes as required to maintain the strategic readiness of our forces and our ability to defend national security interests around the globe.

This memorandum provides additional guidance to ensure uniform implementation of Secretary of Defense Memorandum, "Rescission of the August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces," January 10, 2023 (January 10, 2023 memorandum).

As required by section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, the January 10, 2023 memorandum rescinded the August 24, 2021 and November 30, 2021 Secretary of Defense mandates that members of the Armed Forces be vaccinated against the coronavirus disease 2019 (COVID-19) and thereby also rendered all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023. These include, but are not limited to, any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.

DoD Component policies, directives, and guidance have not been operative since the January 10, 2023 memorandum was issued, regardless of the status of the DoD Component conforming guidance. DoD Component heads shall formally rescind any such policies, directives, and guidance as soon as possible, if they have not done so already. DoD Component heads shall certify to the Under Secretary of Defense for Personnel and Readiness in writing that these actions have been completed no later than March 17, 2023.

The January 10, 2023 memorandum recognizes that other standing Departmental policies, procedures, and processes regarding immunizations remain in effect, including the ability of commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions, such as when vaccination is



OSD001649-23/CMD002077-23

required for travel to, or entry into, a foreign nation. This continues to be the case, in accordance with the guidance below.

The Department's Foreign Clearance Guide will be updated to reflect that DoD personnel must continue to respect any applicable foreign nation vaccination entry requirements, including those for COVID-19. Other than to comply with DoD Foreign Clearance Guidance, DoD Component heads and commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member's COVID-19 immunization status in making deployment, assignment, and other operational decisions, absent establishment of a new immunization requirement in accordance with the process described below. It is my expectation that any requests to the Assistant Secretary of Defense for Health Affairs (ASD(HA)) for approval to initiate mandatory immunizations of personnel against COVID-19 will be made judiciously and only when justified by compelling operational needs and will be as narrowly tailored as possible.

Department of Defense Instruction (DoDI) 6205.02, "DoD Immunization Program," July 23, 2019, will be updated as follows to establish a process requiring the Secretary of a Military Department, the Director of a Defense Agency or DoD Field Activity that operates medical clinics, or the Commandant of the Coast Guard, to submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel. Effective immediately, I direct the following action:

Paragraph 2.11. of DoDI 6205.02 is revised by adding a new subsection g., which will read:

"Submit requests to the ASD(HA) for approval to initiate, modify, or terminate mandatory immunizations of personnel and voluntary immunizations of other eligible beneficiaries determined to be at risk from the effects of deliberately released biological agents or naturally occurring infectious diseases of military or national importance."

The Commander of a Combatant Command must submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel through the Joint Staff, consistent with existing processes specified in DoDI 6205.02.

The Director of Administration and Management will make the revision directed above as a conforming change to the version of DoDI 6205.02 published on the DoD Issuances website.

A handwritten signature in dark ink, appearing to read "Kathleen H. Hall". The signature is fluid and cursive, with the first name "Kathleen" written in a large, stylized script, followed by "H." and "Hall".

Exhibit 2

Not for publication until released by the House Armed Services Committee

Prepared Statement

of

The Honorable Gilbert R. Cisneros, Jr.

Under Secretary of Defense for Personnel & Readiness

Before the

House Armed Services Subcommittee on Military Personnel

February 28, 2023

Not for publication until released by the House Armed Services Committee

Chairman Banks, Ranking Member Kim, and members of the subcommittee, thank you for the opportunity to testify before you today on the status of the Department of Defense's actions to confront the COVID-19 pandemic, protect our personnel across the Total Force, and ensure that the U.S. military can fight and win whenever needed in defense of the United States. Since the pandemic began, the civilian and military leadership at the Department, across two administrations, has led a highly effective response to an invisible, novel, and evolving threat. I appreciate the opportunity to share our experiences.

The pandemic has been nothing short of a national and global tragedy. More than 1.1 million American lives were lost to COVID-19, including 96 Service members, 36 military family members, 417 DoD civilian employees, and 141 DoD contractor employees. People are my top priority, and we all mourned the loss of our people to this awful disease. My heart goes out to their families and friends who will feel such loss for the rest of their lives.

The Department's response to the COVID-19 pandemic was historic and complex. Members of the Armed Forces on Active Duty, in the Reserve, and in the National Guard helped staff and operate testing and vaccination sites, provided medical and logistical support to stressed hospitals and overburdened civilian medical systems, and transported critical medical supplies when global supply chains froze. The Department's acquisition team procured the supplies and equipment needed by the Nation to combat the pandemic, including materials essential to development and manufacturing of tests and vaccines. The Nation is stronger thanks to the Department's swift and effective actions, which helped save the lives of many Americans, both in and out of uniform.

The Department of Defense and the Military Services took bold, necessary steps to protect the Force and its ability to operate in response to this new threat. These consisted of a

multilayered approach to Force health protection, including distancing, masking requirements, testing, staggered work schedules, remote work when possible, pre-deployment restrictions of movement, and mass immunization of the Force. Each Military Service has a unique mission, and the Military Services successfully employed these approaches to protect their ability to operate. Most importantly, these actions helped reduce the spread of the virus and protect our Service members from the harmful outcomes of COVID-19, including severe illness, hospitalization, and death. When COVID-19 vaccination became available, our Service members received the vaccine to protect themselves, their teammates, and their family members.

The first military personnel were provided the option to receive the COVID-19 vaccine beginning December 14, 2020, after the Food and Drug Administration (FDA) granted Emergency Use Authorization. The FDA granted the first (non-EUA) licensure for a COVID-19 vaccine on August 23, 2021. The next day, the Secretary of Defense established a COVID-19 immunization requirement for Service members, by which time 36 Service members had died of COVID-19. At that time, more than 1,000 Americans were dying of COVID-19 every day.

Today, more than two million Service members (more than 96%) are vaccinated against COVID-19. Approximately 53,000 Service members requested an exemption or accommodation related to the COVID-19 vaccination requirement for medical, religious, or administrative reasons, and 15,166 exemptions and accommodations were granted (13,508 administrative exemptions, 1,152 temporary medical exemptions, 107 permanent medical exemptions, and 399 religious accommodations). Each request was considered individually and adjudicated consistent with established, DoD-wide uniform standards. The administrative exemptions were typically granted for Service members who were within 6 months of separation or retirement, and the temporary medical exemptions were typically granted for pregnancy. When adjudicating

exemption and accommodation requests, the Military Services considered individual circumstances, the risk to mission, and the efficacy of the vaccine against adverse outcomes, including severe illness, hospitalization, and death.

Vaccination requirements for military personnel are not new and are important to maintain individual medical readiness and reduce risk to the mission. The U.S. military requires Service members to take several prophylaxis vaccines against communicable threats. Some, like the measles, mumps, and rubella vaccine, are required for all military personnel who do not already have immunity upon accession. The seasonal influenza vaccine is required for all Service members each year. Others, like the yellow fever vaccine, are required for entry into a specific theater of operation. These vaccine requirements keep our Service members and those they work and serve with healthy, safe, and ready to conduct their assigned missions.

Approximately 16,000 Service members refused to be vaccinated against COVID-19 without making any request for exemption or accommodation. A small fraction of Service members who did not request or receive an exemption or accommodation from the requirement to be vaccinated against COVID-19 refused to receive the COVID-19 vaccine even after receiving a lawful order to do so, and 8,422 were subsequently separated. Compliance with lawful orders is not optional in the military, and leaders within the Military Services took appropriate disciplinary action, including separation where appropriate, to maintain good order and discipline.

The combination of these measures enabled the U.S. military to continue crucial operations amid a challenging global threat environment. These policies continue to succeed at protecting our people and the nation's security. For a globally positioned Total Force—consisting of more than 3 million people—with national security and domestic support

implications for all Americans, the Department's prompt and effective actions saved countless lives and ensured critical mission readiness to defend the United States against all national security threats.

As the pandemic has evolved and the Military Services achieved a very high vaccination rate, the Department has modified its Force Health Protection Guidance, brought the workforce back into physical workspaces, removed masking requirements, and ended pre-deployment restrictions of movement. The most recent Departmental guidance, issued January 30, 2023, updates protocols for individuals exposed to someone with COVID-19 to align with the latest guidance from the Centers for Disease Control and Prevention, among other changes.

In December 2022, for the first time in history, Congress passed legislation to rescind a vaccination requirement for Service members. Section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 required the Secretary of Defense to rescind his memorandum requiring COVID-19 vaccination for Service members.

The Department has complied with the NDAA requirement. On January 10, 2023, Secretary Austin signed a memorandum rescinding the COVID-19 vaccination requirement, as required by statute, and indicating that the Department "will continue to promote and encourage COVID-19 vaccination for all Service members." The memorandum also provides that "no individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds." Appropriate officials within the Military Services continue to review cases of currently serving Service members who did not request an exemption or accommodation on an individual basis to determine appropriate action. The Department remains open to considering the reentry of previously separated members on a case-by-case basis; such

persons may utilize the standard accession processes for former Service members who have a break in service. As a matter of policy, the Department is not planning to provide back pay or service credit to Service members who were separated for refusing to take the vaccine or to National Guard members who did not comply with medical readiness requirements, including the requirement to be vaccinated against COVID-19.

Let me be clear: As we sit here today, there is no COVID-19 vaccination requirement for Service members or any other Department of Defense personnel. The Military Services no longer require COVID-19 vaccination for accession to, or retention in, their respective Military Service. This includes all new military accessions—both enlisted and officers—as well as cadets and midshipmen in officer commissioning programs. However, the Department will continue to respect host nation requirements, including vaccination requirements for entry into foreign nations, for personnel on official travel.

On February 24, Deputy Secretary of Defense Hicks published a memorandum directing DoD Component Heads to formally rescind policies, directives, and guidance related to COVID-19 vaccination requirements as soon as possible, if they have not done so already, and to certify in writing to my office that these actions have been completed no later than March 17, 2023. The memo also indicates that, except to comply with foreign entry requirements, “... DoD Component Heads and commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member’s COVID-19 immunization status in making deployment, assignment, and other operational decisions, absent establishment of a new immunization requirement...” Relatedly, the memo updates DoD Instruction 6205.02, “DoD Immunization Program” to establish a process requiring various DoD

Components to submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel, to the Assistant Secretary of Defense for Health Affairs.

The future course of the COVID-19 pandemic is unknown. The Department must maintain its flexibility to adjust policies as needed to protect the Force and defend the nation amid changing public health conditions.

I am proud of the Department's work to confront the COVID-19 threat to the Force and the nation's defense, which was a highly effective response to an unprecedented challenge. The threats posed by future pandemics and biological warfare must be considered in preparations for future contingencies.

In this year of major milestones—the 50th anniversary of the All-Volunteer Force and the 75th anniversary of President Truman's executive order to provide equality of treatment and opportunity for Service members without regard to race, color, religion, or national origin—the dedication of our Total Force to ensure mission readiness and defend America's national security is a critical message for young Americans. I appreciate the opportunity to showcase the collective power of our Department against an overwhelming challenge—the COVID-19 pandemic. Thank you for the opportunity to appear before the subcommittee, and I look forward to your questions.

Exhibit 3



SECRETARY OF THE AIR FORCE
WASHINGTON

24 FEB 2023

MEMORANDUM FOR ALMAJCOM-ALFLDCOM-FOA-DRU/CC
DISTRIBUTION C

SUBJECT: Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodation Requests

In accordance with my 23 January 2023 memorandum "Rescission of 3 September 2021 Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members and 7 December 2021 Supplemental Coronavirus Disease 2019 Vaccination Policy Memoranda," I want to reinforce that all policies within the Department of the Air Force associated with the implementation of the Coronavirus Disease 2019 (COVID-19) vaccination mandate for Service members were also rescinded. Commanders at all levels must ensure that associated guidance derived from the mandate is rescinded. Refer to USD(P&R) Re: Consolidated Department of Defense Coronavirus Disease 2019 Force Health Protection Guidance - Revision 4, 30 January 2023 for current force health protection guidance.

I am issuing the following additional guidance with respect to the removal of adverse actions, and the handling of religious accommodation requests for those Service members who refused vaccination. At the time the actions were taken, they were appropriate, equitable and in accordance with valid lawful policy in effect at the time; however, removal of those actions is now appropriate in some circumstances.

a. Removal of Adverse Information: Currently serving Regular Air Force (RegAF), Space Force, Air National Guard, and Air Force Reserve members [including those involuntarily reassigned to the Inactive Ready Reserve] who sought an exemption on religious, administrative, or medical grounds, and who received adverse actions solely due to their refusal to receive a COVID-19 vaccine shall have these items removed as detailed below. The Service member must have formally sought an accommodation on religious, administrative, or medical grounds prior to or concurrent with the official initiation of the adverse action in order to receive relief under this memorandum. Commanders will ensure the removal of such adverse actions from currently serving Service members' records in accordance with the below guidance. Members will be notified by their command or record holder (e.g. Air Force Personnel Center (AFPC), Air Reserve Personnel Center (ARPC)) when the adverse actions have been removed from their records. This policy does not apply to members who refused the COVID-19 vaccination and did not request an exemption. Members who did not seek an exemption may petition their chain of command under existing DAF policy or the Air Force Board for Correction of Military Records (AFBCMR) for removal of adverse information if they believe an injustice or error has occurred. The process to petition the AFBCMR may be found at: <https://Afrba-portal.cce.af.mil>.

(1) Letters of Admonishment, Counseling, or Reprimand, and Records of Individual Counseling issued solely for vaccine refusal after requesting an exemption as

described above will be rescinded. Removal of actions for enlisted members will follow the procedures in DAFI 36-2907. Removal of officer adverse actions will follow DAFI 36-2907, except that the removal of Letters of Counseling related to a substantiated finding from an officially documented investigation, Letters of Admonishment and Letters of Reprimand from a Personnel Information File (PIF) or Unfavorable Information File (UIF) is delegated to commanders in the member's current chain of command who are equal or senior in grade to the initial imposing authority. Where the administrative action addresses additional misconduct, the administrative action will be redacted to remove all language associated with the member's refusal to receive the COVID-19 vaccine. Commanders will make new determinations as to whether to uphold, downgrade, or withdraw the administrative action and entry into a PIF or UIF without consideration of the refusal to receive the COVID-19 vaccine. Any requirement for AFBCMR direction for removal of actions from Military Human Resource Records or other files will be accomplished by AFPC/ARPC as appropriate if removal is required under this memorandum. The member's command will inform AFPC/ARPC which adverse actions will be removed, redacted, or replaced.

(2) Nonjudicial punishments issued solely for vaccine refusal after requesting an exemption as described above will be set aside in their entirety. Nonjudicial punishments issued partially for such vaccine refusal will have the vaccine refusal portion set aside and the remainder of the nonjudicial punishment reassessed for appropriateness. When the set aside is more than four months after the execution of the punishment, commanders should reference the SecDef Memo dated 10 January 2023 on an attachment to the AF Form 3212.

(3) Referral Performance Reports issued solely for vaccine refusal after requesting an exemption as described above will have the referral report removed from the member's personnel record and replaced with a statement of non-rated time. Where the referral report addresses additional misconduct, the report will be redacted to remove all language associated with the member's refusal to receive the COVID-19 vaccine and the rater and/or additional rater will reassess if the remaining report should remain a referral.

(4) Promotion Records will be corrected by the record holder (e.g., AFPC, ARPC, SAF/IG) to remove or redact, as appropriate, all adverse actions related to the member's refusal to receive the COVID-19 vaccine.

(5) Promotion Propriety Actions will continue processing in accordance with DAFIs 36-2501 and 36-2504 and may only be closed by Secretarial action.

(6) Current involuntary discharge proceedings will be terminated IAW the procedures in DAFI 36-3211 if the basis was solely for refusal to receive the COVID-19 vaccine. If there are additional circumstances supporting discharge, commanders should make a determination as to whether to continue discharge proceedings, including re-notification of discharge.

(7) Adverse actions removed under the provisions of this guidance memorandum contained in Inspector General files pursuant to AFI 90-301 will be removed from those files.


b. Processing of religious accommodation requests (RARs) requesting an exemption to the COVID-19 vaccination requirement.

(1) Due to the rescission of the COVID-19 vaccine mandate, all outstanding RARs for COVID-19 vaccination have been cancelled and will be returned without action.

(2) Individuals, whose COVID-19 RAR also requested accommodation for other mandated vaccinations, may resubmit their RAR to their unit commander for non-COVID-19 vaccinations in accordance with DAFI 52-201. Previous requests should be updated to provide any additional information the member deems relevant to the specific vaccine(s) the member is requesting an accommodation for. In order to expedite processing, members who desire to submit a new accommodation are requested to do so within 30 days.

(3) Commanders will expeditiously review and adjudicate RARs in accordance with DAFI 52-201 with the following exceptions. Upon resubmission by the member, unit commanders will review the revised package and provide a command recommendation. Following unit commander recommendation on the resubmitted package, if the RAR was previously reviewed by a Religious Resolution Team (RRT), it will be forwarded to the initial decision authority. Resubmitted RARs that were not previously reviewed by an RRT will be processed expeditiously through the DAFI 52-201 RRT process. Resubmitted RARs that were at the appellate authority will be forwarded by the unit commander to the initial decision authority. If the initial decision authority disapproves the requested accommodation, it will be forwarded directly to the appellate authority. Personnel at all levels will consider additional information provided by the applicant and the commander's recommendation.

Let me close by expressing my admiration to the men and women of this Department for the tremendous effort and accomplishments in response to the COVID-19 pandemic while also ensuring the readiness of the force and defense of the Nation. We will continue to encourage COVID-19 vaccination for all personnel to ensure readiness, facilitate mission accomplishment, and protect our people.



Frank Kendall
Secretary of the Air Force

cc:
AF/CC
SF/CSO

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

HUNTER DOSTER, *et al.*,

Plaintiffs,

V.

FRANK KENDALL, *et al.*,

Defendants.

No. 1:22-cv-00084

DECLARATION OF STAFF SERGEANT ASHLEY CHAPONIS

I, Ashley L. Chaponis, United States Air Force, declare and state as follows:

1. I am an active-duty Air Force Staff Sergeant (SSgt) and currently perform duties as a paralegal for the Military Personnel Litigation Branch of the Personnel and Information Law Division, Civil Law Directorate, Department of the Air Force Judge Advocate General's Corps. I have been employed by the Department of the Air Force since October 19, 2010 and have served in various other roles in the Air Force Judge Advocate General's Corps.

2. I am familiar with the allegations made in the above-captioned case. As part of this case, my office coordinated with the commands for the 18 named plaintiffs concerning any potential adverse actions. I have reviewed the information provided by the respective commands concerning the plaintiffs. I have also reviewed the Secretary of the Air Force's February 24, 2023 memorandum, "Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodation Requests."

3. Based on the information provided to me by their respective commands, I can confirm that none of the 18 named plaintiffs have any adverse actions (in accordance with the Secretary of the Air Force's February 24, 2023 Memorandum) in their records at this time. Adverse action

was not taken against 14 of the plaintiffs. Four plaintiffs – Senior Master Sergeant (SMSgt) Christopher Schuldes, SSgt Adam Theriault, Senior Airman (SrA) Joe Dills, and Airman First Class (A1C) McKenna Colantonio – received Letters of Reprimand for refusal to follow the order to receive the COVID-19 vaccine. On February 13, 2023, all 4 Letters of Reprimand were removed from the Service members' records and the members were subsequently notified of their removal.

4. The four plaintiffs who received the Letters of Reprimand did not receive any other adverse action. No other action to rescind adverse actions, as required by the February 24 memorandum, was necessary for any of the 18 plaintiffs.

5. Two plaintiffs – Second Lieutenant (2d Lt) Connor McCormick and 2d Lt Alex Ramsperger – both voluntarily complied with the COVID-19 vaccine requirement prior to its rescission.

6. One plaintiff – SSgt Adam Theriault – voluntarily separated from military service in April 2023 upon completion of his service obligation. His enlistment period ended and he did not seek to re-enlist.

7. Since the beginning of the litigation, two plaintiffs were promoted. 2d Lt Hunter Doster was promoted to First Lieutenant and Major Daniel Reineke promoted to Lieutenant Colonel.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 1, 2023.

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ASHLEY L. CHAPONIS, SSgt, USAF
Paralegal,
Military Personnel Litigation Branch
Personnel and Information Law Division
Air Force Judge Advocate General's Corps

Exhibit 5

DECLARATION OF JOHN E. HARTSELL

I, John E. Hartsell, hereby state and declare as follows:

1. I am the Associate Chief of the Military Justice Law and Policy Division in the Military Justice and Discipline Directorate at Joint Base Andrews, Maryland. I have been in this position since 2014. As a part of my duties, I am responsible for providing counsel on military justice matters to senior leaders, as well as guidance on military justice policy and processes to legal offices at every level of command. The Division also represents the Air Force on the Joint Service Committee on Military Justice: an inter-agency, joint body dedicated to ensuring the Manual for Courts-Martial and Uniform Code of Military Justice constitute a comprehensive body of criminal law and procedure.

2. I make this declaration in my official capacity as the Associate Chief of the Military Justice Law and Policy Division and based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

3. I have reviewed the declaration signed by Master Sergeant (MSgt) Lucila Sanchez Martinez. I am submitting this declaration in order to correct certain misunderstandings asserted in her declaration. Entries in the Automated Military Justice Analysis & Management System (AMJAMS) for Service members who submitted an exemption request, including a religious accommodation, and subsequently received adverse actions for refusing to follow the order will not “affect an airmen’s ability to promote,” or ability to receive “special assignments and other career enhancing assignments,” and will not “affect their post-service career.”

4. AMJAMS is a web-based system used to process and track the handling of disciplinary cases within the Air Force. The system provides case detail and statistical reports for all levels of command, for use within the Air Force Judge Advocate General’s Corps (AFJAGC). Only

authorized legal personnel have access to AMJAMS. AF/JA is the release authority for data collected and stored in AMJAMS and the products they may generate.¹ However, information entered into AMJAMS is considered attorney work product and subject to limited release in accordance with federal law and will not otherwise be disclosed.²

5. AF/JA has delegated limited authority to installation Staff Judge Advocates for release of derogatory data within AMJAMS when an installation receives a request for such data pertaining to a specific person. That delegation does not include release of AMJAMS reports, nor does it include the release of the types of adverse actions given to members of the *Doster* class (e.g., nonjudicial punishments or other adverse actions short of court-martial), as “the [Judge Advocate] community is not the [office of primary responsibility] for those records, and it does not comprehensively track corrections or expungements to such records.”³

6. Department of the Air Force commanders are expected to approach every instance of a military member’s refusal to obey a lawful order to receive the COVID-19 vaccination on a case-by-case basis. To my knowledge, no Air Force or Space Force member has been court-martialed for their refusal to receive a COVID-19 vaccine under the now-rescinded mandate. Instead, Airmen and Guardians who refused the vaccine either received no action; administrative action, such as issuance of Letter of Counseling (LOC) or Letter of Reprimand (LOR); or nonjudicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ). When the COVID-19 vaccine mandate was issued, legal offices were directed to enter those who violated that order into

¹ DAFI 51-201, para. 31.3.1, Attachment 1, available at https://static.e-publishing.af.mil/production/1/af_ja/publication/dafi51-201/dafi51-201.pdf.

² DAFI 51-201, para. 31.3. See also *Hickman v. Taylor*, 329 U.S. 495 (1947); Fed. R. Civ. Proc., Rule 26(b)(3); E.O. 13825; *United States v. Romano*, 46 M.J. 269 (C.A.A.F. 1997); *United States v. Bowser*, 73 M.J. 889 (A.F. Ct. Crim. App. 2014).

³ DAFI 51-201, para. 31.3.4.

AMJAMS as a “special interest report” so that such actions could be administratively tracked and reported to command chains and higher headquarters on an as-needed basis.

7. In accordance with the Department of the Air Force Rescission Implementation Guidance,⁴ commanders have been directed to remove adverse administrative actions, NJPs, and other related actions for refusal to comply with the order to receive the COVID-19 vaccine from Service members’ records if they had submitted a request for exemption from the vaccination requirement.

8. For nonjudicial punishments, “[s]etting aside a punishment in its entirety restores the member to the position held before imposition of the punishment, as if the NJP had never been initiated.”⁵ The setting aside of a punishment causes the punishment to be “void[ed]” and “removed from the record” and causes “any rights, privileges, pay, or property affected by the relevant portion of the punishment” to be “restored.”⁶ For administrative actions, such as LOCs and LORs, “[t]he record of action consists of the finalized LOC, LOA, or LOR and written response thereto submitted by the member and/or the member’s defense counsel.”⁷ Administrative actions that are not finalized do not comprise the record of action and are not filed in an individual’s personnel file. Likewise, rescinding a finalized administrative action “removes the rescinded action from” that individual’s personnel file.⁸

9. As administrative and/or disciplinary actions are closed out, legal offices ordinarily provide a short description of the disposition of the action in AMJAMS. As adverse actions are

⁴ Secretary of the Air Force Memorandum, “Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodation Request,” February 24, 2023.

⁵ DAFI 51-202, para. 5.7.2, Attachment 2, available at https://static.e-publishing.af.mil/production/1/af_ja/publication/dafi51-202/afi51-202.pdf.

⁶ DAFI 51-202, para. 5.7.

⁷ DAFI 36-2907, para. 2.4.4, Attachment 3, available at https://static.e-publishing.af.mil/production/1/af_a1/publication/dafi36-2907/dafi36-2907.pdf.

⁸ DAFI 36-2907, para. 2.4.6.3.3.

removed from Service members' records in accordance with the Rescission Guidance, I anticipate the AMJAMS entries will be updated to reflect that the action had been rescinded. This is similar to an AMJAMS entry following a criminal investigation indicating charges were not filed or following a court-martial indicating the member had been acquitted. While it is possible for the case and its attorney work product to be reviewable after closure, the details of each case remain subject to very limited release, as noted above. Additionally, while such cases may remain in AMJAMS, their existence does not impact the legal and administrative effects of no action, withdrawal, or set aside for those cases; nor would it be considered by any promotion board. Our office does routinely receive official requests from Air Force offices seeking a background check, but we do not confirm the existence of any action recorded in AMJAMS unless it involves a court-martial conviction. We are not the office of primary responsibility (OPR) for NJP, administrative actions, or investigations; hence, we do not confirm the existence of any such activity to the requestor. We are the OPR for courts-martial and do confirm convictions, but we decline a positive response on NJP, administrative actions, and investigations and direct the requestor to the appropriate OPR. "Access is also limited by both case law and Executive Order. Such limitations protect the United States and its service members' interests by shielding delicate information from an unauthorized release."⁹ Use of AMJAMS entries in violation of federal directives and guidance from the Department of Defense, Department of the Air Force, and other federal agencies is not authorized.

10. Plainly stated, AMJAMS entries showing that a member had an adverse action that was later rescinded would not be authorized for release in a background check and would therefore not

⁹ DAFI 51-201, para. 31.3.

be used in making promotion decisions, career or assignment decisions, or otherwise released to outside agencies as part of a background check for existing derogatory data.

11. An important reason for keeping the records of NJP, administrative actions, and investigations (but not releasing them as part of background checks) concerns the actions of command. A servicemember is entitled to file an Inspector General (IG) complaint, write to a member of Congress, and file an Article 138, UCMJ complaint against his or her commander; the AMJAMS record serves as a record of how the command handled a particular case. The AMJAMS record allows our office to help evaluate the propriety of good order and discipline meted out in a particular case; the destruction of these records is not in the best interests of IG and Congressional oversight of military justice administration.

12. Pursuant to the Department of Defense (DoD) Mandate Rescission,¹⁰ Department of the Air Force Mandate Rescission,¹¹ DoD Rescission Implementation Guidance,¹² and Department of the Air Force Implementation Guidance,¹³ no Service member in the Department of the Air Force who submitted an exemption request may be subject to additional adverse action, including court-martial, for past failure to follow an order to receive the COVID-19 vaccine. Since the DoD and Department of the Air Force have rescinded the COVID-19 vaccine mandate, orders requiring members to receive the vaccine were nullified and there is no risk of the initiation of new adverse actions based on the rescinded policy for such service members continuing to be unvaccinated.¹⁴

¹⁰ Secretary of Defense Memorandum, “Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces,” January 10, 2023.

¹¹ Secretary of the Air Force Memorandum, “Rescission of 3 September 2021 Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members and 7 December 2021 Supplemental Coronavirus Disease 2019 Vaccination Policy Memoranda,” January 23, 2023.

¹² Deputy Secretary of Defense Memorandum, “Guidance for Implementing Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces,” February 24, 2023.

¹³ Secretary of the Air Force Memorandum, “Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodation Request,” February 24, 2023.

¹⁴ See Deputy Secretary of Defense February 24, 2023 Memorandum (“Other than to comply with DoD Foreign

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of March 2022.

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JOHN E. HARTSELL, GS-15, USAF
Associate Chief, Military Justice Law and Policy Division

3 Attachments:

1. DAFI 51-201, *Administration of Military Justice*, April 14, 2022.
2. DAFI 51-202, *Nonjudicial Punishment*, January 4, 2022.
3. DAFI 36-2907_DAFGM2022-01, *Adverse Administrative Actions*, April 27, 2022.

Clearance Guidance, DoD Component Heads and commanders will not require a Service member or group of Service members to be vaccinated against COVID-19”).

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-201**



14 APRIL 2022

LAW

**ADMINISTRATION OF MILITARY
JUSTICE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at www.e-Publishing.af.mil for downloading or ordering.

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JAJ
(Brigadier General Rebecca R. Vernon)

Supersedes: AFI 51-201, 18 January 2019

Pages: 246

This instruction implements Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the Uniform Code of Military Justice (UCMJ), Manual for Courts-Martial (MCM), including the Rules for Courts-Martial (R.C.M.) and Military Rules of Evidence (M.R.E.) and applicable Department of Defense (DoD) guidance. It applies to individuals at all levels, including Regular Air Force, Space Force, and the Air Force Reserve Component, including members of the Air National Guard who committed violations of the UCMJ while in Title 10 status. Commands may supplement this instruction only with the prior, written approval of the Military Justice Policy Division (JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This Instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by DoD Directive (DoDD) 5400.11, DoD Privacy Program. The applicable System of Records Notice (SORN), "Military Justice and Civilian Criminal Case Records," DoD 0006, is available at <https://www.federalregister.gov/documents/2021/05/25/2021-10367/privacy-act-of-1974-system-of-records>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the Air Force Form 847, *Recommendation for Change of Publication*; route Air Force Forms 847 from the field through major command (MAJCOM) or field command (FLDCOM) functional managers. The authorities to waive requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. For tiered items, submit requests for waivers through the chain of command to the

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SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. This document implements requirements contained in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, Division E (Military Justice Act of 2016), FY 2019 NDAA, FY 2020 NDAA, and FY 2021 NDAA. It updates guidance as necessary to reflect the establishment of the United States Space Force as an armed force within the DAF. Guidance on victim and witness matters has been removed from this instruction and published as a separate instruction, DAFI 51-207, *Victim and Witness Rights and Procedures*. This includes sections pertaining to the Victim and Witness Assistance Program (VWAP), Victims' Counsel (VC) Program, Central Witness Funding, Witness Production, and Immunity. Matters pertaining to criminal indexing have been substantially revised to comply with updated DoD policy and publication of AFMAN 71-102, *Air Force Criminal Indexing*. Article 137, UCMJ, requirements are updated to reflect myLearning training as an authorized method of delivering training. Policy previously included in AFI 51-204, *United States Air Force Judiciary and Air Force Trial Judiciary* has been consolidated into this instruction, which supersedes AFI 51-204. All templates have been removed from this instruction and can now be found only on the Virtual Military Justice Deskbook (VMJD). Finally, most guidance on legacy cases referred prior to 1 January 2019 has been removed from this instruction.

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Chapter 1

OVERVIEW, TEMPLATES, ROLES & RESPONSIBILITIES

Section 1A—Overview

1.1. Overview. The military justice system promotes justice, assists in maintaining good order and discipline, and promotes military efficiency and effectiveness, thereby strengthening the national security of the United States. This instruction implements requirements for the administration of military justice in the DAF (comprised of the Air Force and Space Force). The primary sources of direction and guidance on military justice are the UCMJ, Title 10 United States Code (U.S.C.) § 801 et seq., and the MCM which includes the R.C.M. and M.R.E. Compliance is mandatory with the UCMJ as federal law, and with the MCM as an Executive Order. **(T-0).** While this publication may expand upon articles of the UCMJ or rules in the MCM, to the extent this publication is ever in direct conflict with the UCMJ or MCM, those sources take precedence over this publication. All requirements that are not tiered may only be waived by JAJM or superior functional authority with coordination with JAJM. Submit waiver requests via AF Form 847 through the functional chain.

1.2. Templates. All templates implementing the UCMJ and MCM that are referenced in this instruction can be found on the VMJD on Flite KM. Contact JAJM for questions. The link for VMJD is available to Air Force JAG Corps personnel at <https://kmjas.jag.af.mil/moodle/course/view.php?id=251>. Non-JAG Corps personnel requesting copies of templates should work with the relevant servicing legal office to obtain needed templates and other documents.

1.2.1. Templates. With limited exceptions, legal offices are strongly advised to use JAJM-produced templates that are included on the VMJD. Templates may be modified as needed to address the particulars of a given case, however the format should be adhered to unless modification is required. This ensures consistency in military justice documentation and records of trial throughout the DAF. Nothing in the templates should be construed to inhibit the ability of an attorney to provide legal advice to a commander, convening authority, or trial participant.

1.2.2. Modification of Templates. Deviation on substantive provisions is not recommended without prior approval of JAJM; however, templates may be modified to address the facts and circumstances of each individual case (e.g., names, addresses, offense types, etc.). If there is uncertainty about whether a specific provision is substantive, contact JAJM for guidance.

1.3. Mandatory Use of Court-Martial Checklists. The base legal office responsible for prosecuting a court-martial must use the applicable JAJM court-martial checklists, to include checklists for completion of post-trial paperwork and distribution, available on the VMJD. Legal offices must begin using the checklists as soon as they start reviewing a case with an eye toward the earlier of pretrial confinement, preferral of charges, or an Article 30a, UCMJ, pre-referral judicial proceeding. Supplemented checklists may only be used if reviewed and approved by JAJM. Checklists used for an individual court-martial case are maintained and disposed of in accordance with the disposition schedule for the Record of Trial (ROT) and are kept with the base copy of the ROT.

Section 1B—Roles and Responsibilities

1.4. Secretary of the Air Force (SecAF). Exercises Department of the Air Force secretarial authorities set out in 10 U.S.C. § 9013, *Secretary of the Air Force*, the UCMJ, and the MCM. Is a general court-martial convening authority (GCMCA) pursuant to Article 22, UCMJ. Designates commanders with convening authority pursuant to R.C.M. 504. Issues DAFPD 51-2 and other regulations to implement the UCMJ, MCM, and DoD policy. Authorizes The Judge Advocate General (TJAG) to issue DAF publications establishing procedures to administer military justice in the DAF, as directed in DAFPD 51-2.

1.5. The Judge Advocate General. Exercises TJAG authorities set out in the UCMJ and MCM for the DAF. Conducts inspections to supervise the administration of military justice pursuant to Article 6, UCMJ. Advises the SecAF, the Chief of Staff of the Air Force, and the Chief of Space Operations on military justice matters. Provides oversight of the DAF military justice system. Issues DAF publications establishing procedures to administer military justice in the DAF.

1.6. Military Justice and Discipline Directorate (JAJ). Exercises supervisory responsibility for its subordinate divisions. Adjudicates central witness funding matters.

1.6.1. The Director, Military Justice and Discipline (JAJ). A senior judge advocate assigned by TJAG to direct the duties of and to exercise supervisory responsibility for all JAJ personnel, including all members assigned who are detailed to perform full-time duties as directors of trial operations (DTOs) and circuit trial counsel (CTC); chief circuit defense counsel (CCDC), circuit defense counsel (CDC), area defense counsel (ADC), defense paralegal managers (DPM), and defense paralegals (DP); chief circuit victims' counsel (CCVC) and victims' counsel (VC); and appellate government and appellate defense counsel.

1.6.2. Chief, Military Justice Law and Policy Division (JAJM). A senior judge advocate assigned by TJAG to direct the duties of and who shall be responsible for providing field support for the administration of military justice, development and dissemination of DAF military justice instructions and policy, and supervision of certain other actions required by TJAG.

1.6.2.1. JAJM provides counsel, guidance and support to Headquarters DAF, court-martial convening authorities and staff judge advocates (SJAs) on the administration of military justice.

1.6.2.2. JAJM is the Office of Primary Responsibility for this instruction and other regulations establishing procedures to administer military justice in the DAF.

1.6.2.3. JAJM functions as a component of the Office of The Judge Advocate General (AF/JA) for matters pursuant to the UCMJ, as determined by TJAG, operating in close coordination with AF/JAJ.

1.6.2.4. JAJM manages the Automated Military Justice Analysis and Management System (AMJAMS) (and any replacement systems).

1.6.2.5. JAJM is responsible for ROTs for all DAF courts-martial.

1.6.2.6. JAJM provides the DAF active duty voting member to the Joint Service Committee on Military Justice.

1.6.3. Chief, Government Trial and Appellate Operations Division (JAJG). A senior judge advocate assigned by TJAG to direct the duties of and to supervise the DTOs, CTCs, and Government appellate counsel. This individual manages the training and assignment of DTOs and CTCs as part of the Special Victim Investigation and Prosecution (SVIP) capability, details the DTOs and CTCs to courts-martial and supervises all DAF appeals before the Air Force Court of Criminal Appeals (AFCCA), the U.S. Court of Appeals for the Armed Forces (CAAF), and the U.S. Supreme Court. This individual may delegate this authority to the Director of Operations and/or DTOs to detail themselves or their subordinates to courts-martial.

1.6.3.1. Director of Operations, JAJG. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. Supports the Chief, JAJG, in directing the duties of and supervising the DTOs, all CTC, and Government appellate counsel. This individual may detail the DTOs and CTCs to courts-martial and supports the Chief, JAJG in supervising all DAF appeals before AFCCA, CAAF, and the U.S. Supreme Court.

1.6.3.2. DTO. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. **(T-0)**. Assigned to direct the duties of and to supervise the CTCs. The DTO executes the responsibilities of circuit trial counsel duties and details circuit trial counsel to courts-martial in support of military justice throughout the DAF. The DTO may detail himself/herself to courts-martial.

1.6.3.2.1. The Circuit DTO will ensure a thorough review of all pre-preferral Article 120, UCMJ, charges. It is the responsibility of the SJA to ensure proper notifications are made to JAJG personnel, to include the appropriate Circuit Counsel and JAJG leadership, when charges are ready for review.

1.6.3.3. SVU-CTC. The Chief, JAJG, must certify that each SVU-CTC possesses the requisite litigation skills, professionalism, and leadership ability to provide the highest quality of legal representation for the government and support to victims. SVU-CTCs must be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to servicing legal offices.

1.6.3.3.1. Prior to being designated as a member of the SVU, a CTC will generally have completed one year as either CTC or CDC, attended two or more advanced litigation skills courses, received specialized training in prosecuting or defending sexual assaults, and demonstrated an ability to prosecute or defend a variety of sexual assault and/or complex cases.

1.6.3.4. CTC. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. **(T-0)**. Primary duties will include the following in order of priority:

1.6.3.4.1. Serve as trial counsel in general courts-martial.

1.6.3.4.2. Serve as the government representative in Article 32, UCMJ, preliminary hearings when requested by an SJA, as other duties permit, and when made available by the DTO.

1.6.3.4.3. CTCs will not be detailed to serve as trial counsel in special courts-martial or summary courts-martial, except upon approval of the JAJG Division Chief, Director of Operations, or DTO.

1.6.3.4.4. Train, advise, and assist other personnel involved in the prosecution of courts-martial.

1.6.3.4.5. CTCs will not be detailed to serve as recorder for administrative boards convened under AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, and AFI 36-3207, *Separating Commissioned Officers*, except upon approval by the JAJG Division Chief, Director of Operations, or DTO.

1.6.3.4.6. CTCs will not be detailed to serve as recorder for administrative boards convened under AFI 36-3208, *Administrative Separation of Airmen*, except upon approval by the JAJG Division Chief or DTO.

1.6.3.5. SJAs are expected to use their circuit for support and employ the expertise and the services of the DTO, and the CTCs to the maximum extent possible. SJAs should consult with the DTO and/or CTCs on all significant and complicated cases, especially cases involving allegations pursuant to Article 120, UCMJ. While JAJG personnel are charged with litigating cases and training base-level personnel under the supervision of JAJG leadership, SJAs shall be responsible for the courts-martial conducted on their installation.

1.6.4. Chief, Trial Defense Division (JAJD). The Chief, JAJD has overarching supervisory authority over all CCDCs, CDCs, ADCs, DPMs, DPs, the Superintendent, JAJD, the Deputy Chief of Policy and Training, and the Chief, Defense Counsel Assistance Program (DCAP). The Chief, JAJD's duties include: (1) serving as the ultimate detailing authority on all detailing decisions and individual military defense counsel (IMDC) requests not otherwise delegated; (2) managing the training, legal and developmental education, and career progression of all JAJD personnel; (3) personally defending senior officers and others in select cases; (4) overseeing the management of trial defense facilities, equipment, and budgets; (5) serving as the rater for all JAJD personnel not otherwise delegated; and (6) establishing policy and strategic guidance to enhance the trial defense division worldwide.

1.6.4.1. Superintendent, JAJD. The Superintendent is the senior noncommissioned officer assigned to JAJD whose primary duty is to assist and advise the Chief, JAJD, CCDCs and DPMs with all enlisted matters (e.g., training, mentoring, and administrative aspects of enlisted affairs) within the division. Additionally, the Superintendent is responsible for office management matters.

1.6.4.2. DCAP. The DCAP is a civilian attorney who works directly for the Chief, JAJD. The DCAP is responsible for providing technical expertise, strategic planning/policy development, and programmatic continuity for the division. This attorney also develops training for JAJD personnel, serves as reach-back to the field on new and complex issues, and responds to various inquiries and taskers from higher headquarters, Congress, and within the DoD.

1.6.4.3. CCDC. CCDCs, in concert with subordinate CDCs, mentor, train, and direct the provision of defense services throughout their circuit. CCDC duties consist of the following: (1) exercising supervisory authority over all ADCs, DPs, CDCs, and the DPM assigned to their circuit; (2) managing all administrative and personnel actions (e.g., evaluations, awards, and decorations) for personnel assigned to the circuit; (3) serving as the rater for all ADCs and additional rater for all DPs assigned to the circuit; (4) serving as defense counsel in selected courts-martial, administrative boards, investigations, and other

adverse actions; (5) making detailing decisions; (6) acting on IMDC requests for personnel currently assigned to the circuits; (7) overseeing the management of trial defense facilities, equipment, and budgets; and (8) performing other duties as assigned by the Chief, JAJD.

1.6.4.4. DPM. DPMs are the senior enlisted advisors to the CCDCs on all DP matters within their assigned circuit. DPMs also assist and advise CCDCs, CDCs and ADCs on DP professional development, performance reports, awards and decorations, manpower issues, and training/utilization of their circuit's assigned DPs. The DPM evaluates and monitors DP proficiency/upgrade training requirements and coordinates compliance with wing legal offices. DPMs provide DPs with career guidance, training on duties and responsibilities, and oversee law office and resource management. DPMs conduct staff assistance inspections and help provide oversight on the management of trial defense facilities, equipment, and budgets.

1.6.4.5. Deputy Chief of Policy and Training. The Deputy Chief of Policy and Training is an attorney designated by the Chief, JAJD to manage policy and training for all personnel within the division. The Deputy Chief of Policy and Training may be detailed as DC in select courts-martial and other adverse actions, and perform other duties as assigned by the Chief, JAJD.

1.6.4.6. Circuit Defense Counsel. CDCs, in concert with the CCDCs, mentor, train, and direct the provision of defense services throughout their assigned circuit. CDC duties include the following: (1) serving as the first-line supervisory attorney to all ADCs assigned to their region; (2) assisting with administrative matters and personnel actions, as directed by their supervising CCDC; (3) making detailing decisions in accordance with the JAJD Operating Instruction; (4) serving as defense counsel in select courts-martial, administrative boards, and other adverse actions; and (5) training, advising, and assisting other defense personnel in the region, as needed.

1.6.4.7. ADC. ADCs are responsible for providing defense services at the installation where assigned and any designated geographically separated units, subject to conflicts and detailing decisions made by the CDC or CCDC. ADCs serve as a rater and supervisor for the DP(s) assigned to their office. In an office with more than one ADC, the ADC senior in grade or rank is responsible for rating the DP(s) and for oversight of office administration.

1.6.4.8. Defense Paralegal. DPs' primary duties are to support ADCs in the management and operation of the ADC office. As appropriate, DPs shall complete upgrade training in a timely manner, as described in their respective career field education and training plan (CFETP) or other official publication(s).

1.6.4.9. Other Designated Defense Counsel. In accordance with R.C.M.s 502(d)(2)(B) and 506(b), counsel not currently assigned to JAJD may be detailed as defense counsel through the IMDC process. All IMDC requests shall be processed in accordance with this instruction.

1.6.5. Chief, Appellate Defense Division (JAJA). A senior judge advocate assigned by TJAG to direct the duties of and to supervise the division's appellate counsel in filing all appeals on behalf of DAF members entitled to representation under Article 70, UCMJ, before the AFCCA, CAAF, and the U.S. Supreme Court.

1.6.6. Victims' Counsel Division (JAJVS). Provides legal representation to victims of crimes in accordance with 10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*, 10 U.S.C. § 1565, *DNA identification information: collection from certain offenders; use*, 10 U.S.C. § 1044, *Legal assistance*, Public Law 116-92, Section 548, *Legal counsel for victims of alleged domestic violence offenses*, and other applicable rules and regulations. Additionally, the division provides policy guidance on legal representation of victims under those prescribed laws and regulations. For additional information, see DAFI 51-207.

1.6.7. Office of Disability Counsel (JAJO). Provides policy guidance on legal representation of DAF members meeting established criteria for referral into the Disability Evaluation System (DES) in accordance with 10 U.S.C. Chapter 61, *Retirement or Separation for Physical Disability*; DoDI 1332.18, *Disability Evaluation System*; and AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*.

1.6.8. Investigations, Inquiries and Relief Division (JAJI). Functions as a component of AF/JA for matters pursuant to the UCMJ, as determined by TJAG and operating in close coordination with JAJ. Advises senior leaders, SAF/IGQ and SAF/IGS on senior officer misconduct and other matters. Processes adverse actions that require SecAF coordination or approval, including but not limited to nonjudicial punishment (NJP) appeals, recalls to active duty, requests for resignation, retirements, and discharges in lieu of court-martial. Advises SecAF on promotion proprietary actions. Conducts final legal review of formal Article 138 complaints on behalf of SecAF. Advises AF/JA on media, congressional, secretarial, and White House inquiries pertaining to military justice and discipline matters. Coordinates on Board for Correction of Military Records petitions. Recommends actions by SecAF on all affirmed officer courts-martial resulting in a dismissal, and action by SecAF or TJAG on all court-martial sentences in which clemency may be appropriate. Represents TJAG on the Air Force Clemency and Parole Board, advises the Office of the Pardon Attorney on applications for Presidential Pardon, and is counsel to the Director of Air Force Corrections on matters relating to corrections and rehabilitation of DAF inmates.

1.7. Trial Judiciary (JAT). Provides support to military courts-martial throughout the DAF. Details trial judges to courts-martial. Dockets courts-martial. Provides oversight of military judges and court reporters throughout the DAF. Prescribes guidance for military judges regarding procedural and substantive aspects of trials by courts-martial. Responsible for the centralized management of the court reporter program and serves as the single point of contact for all requests for transcription assistance and court reporter temporary duty support. See DAFMAN 51-203, *Records of Trial* for guidance on requesting court reporter assistance.

1.7.1. Chief Trial Judge. A senior judge advocate designated by TJAG, pursuant to statutory authority under Article 26(c) and (g), UCMJ, to direct and manage JAT. The Chief Trial Judge supervises all trial judges, details judges to all DAF general and special courts-martial, supervises the Central Docketing Office, maintains and updates the Uniform Rules of Practice Before Department of the Air Force Courts-Martial, supervises the docketing of all general and special courts-martial within the DAF, and manages and details military judges to administrative hearings as appropriate. The Chief Trial Judge shall be responsible for all policies pertaining to court reporters and the overall management of the court reporter program.

1.7.2. Central Docketing Office. The Central Docketing Office reports directly to the Chief Trial Judge. The Central Docketing Office's primary function shall be to implement the Chief

Trial Judge's (or the Chief Trial Judge's delegee's) decisions regarding the docketing of courts-martial and detailing of military judges.

1.7.3. Military Judge. Must be a judge advocate, certified under Article 27(b)(2), UCMJ, and designated by TJAG as a military judge according to Article 26(b) or (c), UCMJ. **(T- 0).** Military judges are assigned to a designated circuit or to the Chief Trial Judge. Judges may perform the following duties, in an installation or expeditionary environment, subject to availability as determined by the Chief Trial Judge:

1.7.3.1. Preside over courts-martial.

1.7.3.2. Preside over Article 30a, UCMJ, proceedings.

1.7.3.3. Serve as Article 32, UCMJ, preliminary hearing officers (PHOs).

1.7.3.4. Serve as legal advisors for administrative discharge boards or boards of inquiry.

1.7.3.5. Serve as hearing officers for contingent confinement hearings.

1.7.3.6. Serve as pretrial confinement hearing officers.

1.7.3.7. Conduct other investigations.

1.7.3.8. Other duties as detailed by the Chief Trial Judge (e.g. presiding over environmental impact public hearings).

1.7.4. Air Force Trial Judiciary Court Reporter Manager. A paralegal assigned to the Trial Judiciary who is delegated operational authority over the court reporter program. The Court Reporter Manager shall be responsible for the centralized management and detailing of all court reporting and transcription taskings.

1.8. Court Reporters. Records, transcribes, and assembles records for Article 30a, pre-referral judicial proceedings, courts-martial, and other proceedings, as required, in accordance with the MCM, UCMJ, and DAFMAN 51-203. Assists counsel, hearing officers, and the military judge in preparing and marking documents associated with proceedings and may assist paralegals with the assembly of the ROT. Remains neutral and refrains from expressing personal opinions about the case being reported. Records everything that is said or done verbatim, from the initial Article 39(a) session until the court adjourns, and maintains the reporter's notes and recordings according to the Air Force Records Disposition Standards.

1.9. SJA. Performs the duties of the SJA set out in the UCMJ and MCM. Directly reports to and advises the Court-Martial Convening Authority or commander on military justice matters. Supervises the administration of military justice for the command. Forwards specified disposition data for criminal indexing to the appropriate points of contact. Ensures individuals identified by the Force Support Squadron Commander (FSS/CC) receive Article 137 briefings. Serves as the release authority on certain court-martial and disciplinary documents pursuant to VC and civilian victim attorney requests for information, as outlined in this instruction. Supports SVIP and Criminal Investigation and Prosecution (CIP) capabilities. Ensures legal office responsibilities are accomplished in accordance with this and other applicable instructions. See **Section 1C** for additional guidance.

1.10. Court-Martial Convening Authority. Exercises court-martial convening authority powers. With the exception of the President of the United States, the Secretary of Defense, and SecAF, is a commander or commanding officer on G-series orders. In this regulation, the term

“court-martial convening authority” may be used to refer to an individual authorized to convene courts-martial or generally to the authority to convene courts-martial.

1.11. Installation Commanders’ Logistical Support.

1.11.1. Commanders of installations where JAJ or JAT personnel are assigned or on temporary duty (TDY) are responsible for their administrative and logistical support. Host commanders will provide support to JAJ and JAT personnel as set forth in AFI 25-201, *Intra-service, Intra-agency, and Inter-agency Support Agreements Procedures*.

1.11.1.1. Installation commanders will ensure that assigned military judges, CTCs, VCs, and ADC offices receive no less than the same support provided to other units assigned to the host command. This support must include, but is not limited to, the following:

1.11.1.1.1. Private office space clearly designated as a military judge, CTC, VC, ADC office including necessary furniture/supplies and access to electronic law library facilities. ADC offices and VC offices shall be physically separated from the offices of the SJA and the convening authority. AFMAN 32-1084, *Standard Facility Requirements*, sets forth minimum space requirements.

1.11.1.1.2. All communications equipment and support, to include: telephone services, e-mail capability, installation of security measures such as a “panic button” in offices where JAJ and JAT personnel are designated to work, to include courtrooms, and office equipment, including, but not limited to, computer refresh and multi-function device equipment including copier maintenance agreements.

1.11.1.1.3. Military family housing on the same basis as other personnel of like grade, rank, and responsibility.

1.11.1.1.4. Civilian personnel services normally provided by the Civilian Personnel Office.

1.11.1.1.5. Publications support normally furnished tenant units.

1.11.1.1.6. Funding for necessary supplies.

1.11.1.1.7. Duress alarms.

1.11.1.2. Military transportation support is crucial to successful execution of military justice proceedings. The host installation commander should provide suitable military transportation support, such as a government-owned vehicle, to JAJ and JAT personnel TDY to their installation.

1.11.1.3. Host SJAs will assist TDY JAJ and JAT personnel by arranging appropriate billeting, messing, and transportation in advance to ensure TDY personnel may devote full attention to their duties.

1.11.1.4. JAJ provides funding for travel costs and per diem expenses for their personnel when TDY to execute their military justice duties. JAT provides funding for military judges when TDY to execute their military duties. The convening authority funds travelling court reporters.

1.12. Unit Commander. Exercises authorities of a commanding officer set out in the UCMJ and MCM.

1.13. FSS/CC. Identifies individuals that require Article 137 briefings.

Section 1C—Additional Requirements and Delegations Affecting the Staff Judge Advocate

1.14. Title of Staff Judge Advocate. Unless otherwise specified by TJAG, the senior judge advocate on a commander's staff is designated the "Staff Judge Advocate" of that command. All other judge advocates assigned to a command are designated "Assistant Staff Judge Advocates" for the purpose of pretrial advice, post-trial recommendations and court-martial orders.

1.15. Acting as the Staff Judge Advocate. The Deputy Staff Judge Advocate (DSJA) or other assistant staff judge advocate signs "Acting as the Staff Judge Advocate" when the SJA is absent or ineligible to act in a particular case. In all other matters, titles such as "Deputy Staff Judge Advocate" or "Chief, Military Justice," may be used.

1.16. Convening Authority Delegation of Military Justice Administrative Duties. Convening authorities may delegate military justice administrative duties to the SJA or any other attorney assigned to the servicing SJA's office. A template delegation letter is located on the VMJD. In addition to the duties listed in the template, convening authorities may delegate any other military justice administrative duties not expressly requiring convening authority action.

1.17. Signing on Behalf of the Convening Authority. When signing a military justice matter for the convening authority, use the signature element, "FOR THE COMMANDER."

1.18. Staff Judge Advocate Rating Chain. To maintain unfettered access to military justice legal advice, avoid conflicts of interest, execute delegations of convening authority prerogatives, and maintain confidentiality, officers designated as SJAs by TJAG in accordance with Article 6(a), UCMJ, shall report to and be rated by the first commander in the chain of command who has been designated as a convening authority. TJAG-designated SJAs, assigned to units where the commander is not designated as a convening authority, should ordinarily report to and be rated by the immediate commander despite not being designated as a convening authority.

Section 1D—Applicability of This Instruction

1.19. General Rule. In cases where either the substantive or procedural provisions of Military Justice Act of 2016 (MJA 16) do not apply, see the applicable portion of the VMJD and contact JAJM for guidance. This includes all cases in which charges were referred prior to 1 January 2019 (e.g., deserter cases, rehearings).

1.20. Cases Referred On or After 1 January 2019. This version of DAFI 51-201 and all of the provisions of MJA 16 apply to cases referred on or after 1 January 2019, with the following caveats:

1.20.1. Substantive Provisions. The amendments to Articles 2 (personal jurisdiction), 56(d) (Government appeal of sentences), and 63 (rehearings) apply only to cases where all of the specifications allege offenses that occurred on or after 1 January 2019. **(T-0).**

1.20.2. Special Court-Martial by Military Judge Alone. A convening authority shall only refer a case to a special court-martial by military judge alone under Article 16(c)(2) if all of the specifications allege offenses committed on or after 1 January 2019.

1.20.3. Sentencing Procedures. The sentencing provisions in Articles 53 and 56(c) and R.C.M. 1002 apply to cases where all of the charged offenses occurred on or after 1 January 2019. In a case where charged offenses occurred both before and after 1 January 2019 (“straddling cases”), the convening authority may:

1.20.3.1. Refer the charges to two different courts-martial;

1.20.3.2. Apply the sentencing rules in the 2016 MCM to the entire case; or

1.20.3.3. The accused may opt in to the current Article 56(c) sentencing framework for the entire case. If all offenses occurred before 1 January 2019, the accused may not opt in to the new Article 56(c) sentencing framework and only the 2016 MCM sentencing rules apply. See R.C.M. 902A, 1007 and 1009.

1.20.4. Plea Agreements. The current provisions in Article 53a, R.C.M. 705, and R.C.M. 910 apply to cases where all of the specifications allege offenses on or after 1 January 2019. **(T-0)**. See **Section 17B** of this publication. Where a case with straddling offenses involves a plea agreement:

1.20.4.1. The convening authority may refer the charges to two different courts-martial; or

1.20.4.2. The accused may opt in to the new Article 56(c) sentencing framework.

1.20.4.3. The convening authority shall not apply pre-Military Justice Act pretrial agreement rules to a court-martial with straddling offenses.

1.21. Article 60 Authority. Use the version of Article 60 in effect on the date of the earliest offense resulting in a conviction to determine the convening authority’s ability to modify the findings and/or sentence for an entire case. In all cases, regardless of the date of the offense, the convening authority may suspend certain sentences upon the recommendation of the military judge pursuant to Article 60a(c).

Chapter 2

COURT-MARTIAL CONVENING AUTHORITY

Section 2A—DAF Court-Martial Convening Authority (Articles 22, 23, and 24, UCMJ; R.C.M. 504)

2.1. General Court-Martial Convening Authority (GCMCA).

2.1.1. The following DAF commanders may exercise general court-martial convening authority:

2.1.1.1. Commanders of organizations designated in Article 22(a)(7), UCMJ, who have been authorized by SecAF to convene general courts-martial (GCMs) under Article 22(a)(7), UCMJ.

2.1.1.2. Commanders of organizations not designated by Article 22(a)(7), UCMJ, but who are authorized and designated to convene GCMs by SecAF under Article 22(a)(8) or who are empowered by the President under Article 22(a)(9), UCMJ.

2.1.2. Commanders empowered by SecAF to convene GCMs are listed in the current worldwide convening order or worldwide convening authority designation memorandum (WWCO or WWCADM) which can be located on the VMJD.

2.1.3. Requests for authorization to exercise general court-martial convening authority are forwarded through functional channels with commanders' indorsements to JAJM.

2.2. Special Court-Martial Convening Authority (SPCMCA).

2.2.1. The following DAF commanders may exercise special court-martial convening authority:

2.2.1.1. Commanders authorized to convene GCMs under [paragraph 2.1](#) See Article 23(a)(1), UCMJ.

2.2.1.2. Commanders of organizations designated in Article 23(a), UCMJ, who have been authorized to exercise special court-martial convening authority by SecAF. Commanders empowered by SecAF to convene special courts-martial (SPCMs) are listed in the current WWCO or WWCADM which can be located on the VMJD.

2.2.1.3. Commanders of organizations designated in Article 23(a)(4), UCMJ, who are not authorized by SecAF to exercise special court-martial convening authority, but who are authorized by the superior commander of an Air Force major command (MAJCOM) or Space Force field command (FLDCOM) to convene SPCMs. **Note:** Prior to exercise of special court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing MAJCOM/FLDCOM must send a copy of the authorization to JAJM.

2.2.1.4. Commanders who are not authorized by SecAF to exercise special court-martial convening authority, but who are authorized to exercise special court-martial convening authority by the superior commander of a DAF component of a unified or specified combatant command.

2.2.1.4.1. The commander of a DAF component of a unified or specified combatant command may only authorize subordinate commanders to exercise special court-martial convening authority if the subordinate commander commands an organization identified by Article 23, UCMJ, and that organization or unit is assigned or attached to the superior component commander's command. See AFI 38-101, *Manpower and Organization*.

2.2.1.4.2. Prior to the exercise of special court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing GCMCA must send a copy of the authorization to JAJM.

2.2.2. A request for authorization to exercise special court-martial convening authority or a superior commander's authorization for a subordinate commander to exercise special court-martial convening authority is forwarded through functional channels with commanders' indorsements to JAJM to process SecAF's acknowledgement. **Note:** This does not apply to organizations identified in [paragraph 2.2.1.4](#).

2.2.3. Special court-martial convening authority includes the authority to refer cases to a special court-martial by military judge alone as defined in Article 16(c)(2)(A).

2.3. Summary Court-Martial Convening Authority (SCMCA). Any person who may convene a GCM or SPCM may convene a summary court-martial (SCM) under Article 24(a)(1), UCMJ.

2.3.1. The commanding officer of a detached squadron or other DAF detachment may also convene an SCM under Article 24(a)(3), UCMJ, but only with the express authorization of the superior GCMCA for the detached squadron or other detachment consistent with R.C.M. 504(b)(2)(B).

2.3.2. Prior to the exercise of summary court-martial convening authority by a commander pursuant to [paragraph 2.3.1](#), the SJA of the authorizing GCMCA sends a copy of the authorization to JAJM.

Section 2B—UCMJ Jurisdiction (Articles 2 and 3, UCMJ; R.C.M. 201, 202, 203, and 204)

2.4. Exercise of UCMJ Jurisdiction. This section details the exercise of UCMJ jurisdiction and general, special, and summary courts-martial convening authority in the DAF. No other order, document, or implementing agreement is required unless otherwise stipulated below. This section applies to DAF members and Air Reserve Component members when subject to the UCMJ in accordance with Article 2.

2.5. Members of Department of Air Force Tenant Organizations.

2.5.1. Unless otherwise stated in this chapter, all members of a DAF tenant unit or DAF element, whether designated as a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. On bases, to include joint bases, where a unit of another military service has been designated as the host unit, the DAF unit that has the preponderance of military justice capabilities will be considered the "host command" for the purposes of this paragraph unless an installation service agreement specifying the contrary is otherwise in place. Requests for exceptions to the exercise of jurisdiction or convening authority pursuant to this instruction shall be coordinated with JAJM in advance of any exercise of jurisdiction pursuant to this

paragraph. Attachment to a host command for purposes of this paragraph does not serve to divest any commander from the lawful exercise of convening authority. See [paragraph 2.5.5](#).

2.5.2. For guidance specific to the Reserve Component, see [Chapter 3](#).

2.5.3. Members of a tenant unit, DAF Element, or Reserve or National Guard unit include personnel on temporary duty with or otherwise attached to such unit. See also AFI 90-1001, *Total Force Associations (TFAs)*.

2.5.4. Jurisdiction pursuant to [paragraph 2.5](#) is concurrent jurisdiction to be shared between the command chain of the relevant tenant, DAF Element, Reserve, or Title 10 National Guard unit and the relevant Regular Air Force or Space Force unit or host command.

2.5.5. Attachment for the exercise of court-martial convening authority does not serve to divest any commander of authority over a member of an Air Force or Space Force tenant unit, an Air Force or Space Force Element, or a member of the Reserve or National Guard.

2.5.5.1. Exercise of such authority by the applicable Regular Air Force or Space Force host command is preferred to resolve the matter expeditiously, preserve resources, and retain command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the DAF.

2.5.5.2. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined.

2.5.5.3. When it is necessary or desirable to deviate from this jurisdiction arrangement, it must be documented in a support agreement or similar document signed at the GCMCA level or a superior level of command with a copy provided to JAJM.

2.5.6. Air Force Judge Advocates (AFLOA). The following members are attached to AFLOA/CC, the DJAG, for the exercise of special and general court-martial convening authority, regardless of where they are stationed:

2.5.6.1. Circuit Trial Counsel, Circuit Defense Counsel, and Chief Circuit Victims' Counsel;

2.5.6.2. Area Defense Counsel and defense paralegals;

2.5.6.3. Appellate Government Counsel and Appellate Defense Counsel;

2.5.6.4. Victims' Counsel and Victims' Paralegals;

2.5.6.5. Office of Disability Counsel judge advocates and paralegals; and

2.5.6.6. Military trial and appellate judges.

2.6. Jurisdiction of Air Force District of Washington (AFDW). The commander, AFDW (AFDW/CC), as GCMCA, and the Commander, 11th Wing (11 WG/CC), as the SPCMCA, are authorized to exercise court-martial convening authority over Air Force members whose organization is not subordinate to an Air Force or Space Force GCMCA and who are not assigned to an Air Force or Space Force commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, Air Force and Space Force field operating agencies, direct reporting units, Elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government.

2.6.1. Air Force personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to AFDW and its subordinate units for the exercise of court-martial convening authority.

2.6.2. Inmates, parolees, and members on appellate leave assigned to the Air Force Security Forces Center (AFSFC), Confinement and Corrections Directorate, are attached to AFDW and its subordinate commands for court-martial convening authority. This includes members of the USSF who are so assigned.

2.6.3. See [paragraph 2.12](#) for the exercise of convening authority over general officers.

2.7. Jurisdiction of Space Operations Command (SpOC). The commander, SpOC (SpOC/CC) is authorized to exercise court-martial convening authority over Space Force members whose organization is not subordinate to a Space Force or Air Force GCMCA and who are not assigned to an Air Force or Space Force commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, Space Force field operating agencies, direct reporting units, elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government.

2.7.1. Space Force personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to SpOC and its subordinate units for the exercise of court-martial convening authority.

2.7.2. See [paragraph 2.12](#) for the exercise of convening authority over general officers.

2.8. Members of the Air Force Assigned to Headquarters Air Force, Office of the Chief of Space Operations, Joint Staff, or Office of the Secretary of Defense. Air Force members assigned or attached to Headquarters DAF, including the Air Staff and the Office of SecAF; Office of the Chief of Space Operations; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to AFDW and subordinate units for the exercise of court-martial convening authority. See AFDW 51-5, *Administrative Law, Gifts, and Command Relationships*.

2.9. Members of the Space Force Assigned to Headquarters Air Force, Office of the Chief of Space Operations, Joint Staff, or Office of the Secretary of Defense. Space Force members assigned or attached to Headquarters DAF, including the Office of Chief of Space Operations, Air and Space Staffs and the Office of SecAF; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to SpOC and subordinate units for the exercise of court-martial convening authority. See AFDW 51-5, *Administrative Law, Gifts, and Command Relationships*.

2.10. North Atlantic Treaty Organization. Air Force members assigned or attached to North Atlantic Treaty Organization and stationed in Europe are attached to the United States Air Forces in Europe and Air Forces Africa for the exercise of court-martial convening authority and other disciplinary purposes. Space Force members assigned or attached to North Atlantic Treaty Organization and stationed in Europe are attached to the SpOC for the exercise of court-martial convening authority and other disciplinary purposes. See DAFDW 51-2.

2.11. Joint Commands and Other Armed Forces. Pursuant to R.C.M. 201(e), a commander of a unified or specified combatant command may convene courts-martial over any armed forces member. Also, a convening authority of one armed force may convene a court-martial to try a member of another armed force. Nonetheless, a joint or non-DAF commander normally allows the appropriate DAF commander to exercise court-martial convening authority over a DAF member. See AFI 38-101, *Manpower and Organization*.

2.11.1. DAF members in a joint command fall under the applicable DAF component commander for disciplinary purposes. DAF members assigned or attached to an air expeditionary unit fall under the air expeditionary unit chain of command for disciplinary purposes. While attached to a joint command or air expeditionary unit DAF members normally remain assigned to a home station DAF unit, and the home station chain of command maintains concurrent jurisdiction.

2.11.2. DAF convening authorities exercise court-martial jurisdiction over members of other armed forces only when warranted by R.C.M. 201(e)(3). Prior to exercising such authority, the convening authority's SJA must coordinate with JAJM.

2.11.3. Transmitting or transferring any proceeding from one armed force to another armed force within the DAF prior to final action (e.g., court-martial entry of judgment (EoJ), Article 15 staff judge advocate legal review, or separation action) shall not invalidate an otherwise valid proceeding.

2.12. General Officers. Only a commander of an Air Force MAJCOM, Space Force FLDCOM, AFDW/CC, or a superior convening authority may exercise court-martial convening authority over a DAF general officer. This limitation does not apply to the exercise of court-martial convening authority by the commanding officer of a unified or specified command. SecAF has court-martial convening authority over the Chief of Staff of the Air Force, Chief of Space Operations, commanders of MAJCOMs, commanders of FIEDLCOMs, AFDW/CC, and DAF generals not assigned to a MAJCOM, FLDCOM, or combatant command.

2.13. United States Air Force Academy (USAFA) Cadets. Only the Commandant of Cadets, a superior commander at USAFA (e.g., the Superintendent), or a commander designated by SecAF may exercise court-martial convening authority over a USAFA cadet. USAFA cadets are considered either Regular Air Force or Space Force personnel, and are subject to the UCMJ. See Article 2(a), UCMJ. For purposes of courts-martial jurisdiction and limitations on punishments, cadets are treated as officers. See R.C.M. 1003(c)(2)(A). However, cadets cannot serve as members on a court-martial.

2.14. Jurisdiction over Separated and Retired Members.

2.14.1. General Provision. Generally, jurisdiction to try a member of the military by court-martial ceases upon discharge or other separation, provided the discharge is a complete termination of military status and relieves the member of any further military service, including service in the Individual Ready Reserve. Jurisdiction over active duty military personnel normally continues until the member receives a valid discharge certificate, there is a final accounting of pay, and the member has completed administrative clearance processes required by SecAF. See *United States v. Christensen*, 78 M.J. 1 (CAAF 2018) (reaffirming the three-part test and applying a "reason or policy" standard); *United States v. Nettles*, 74 M.J. 289 (CAAF 2015) (pertaining to discharge of reservists); *United States v. Hart*, 66 M.J. 273 (CAAF

2008). Exceptions may include regaining military jurisdiction for members upon reentry into military service or recalling to active duty retired members receiving pay. See Article 2(a), UCMJ, R.C.M. 202(a), Discussion; R.C.M. 204(d).

2.14.2. Members Pending Expiration of Terms of Service, Discharge or Separation. Court-martial jurisdiction extends to those Regular Air Force or Space Force members whose enlistments have expired but are awaiting discharge. See Articles 2(a)(1) and 3(a), UCMJ. A DAF member separated or discharged prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the member retains military status in a reserve component. Action with a view to trial should be taken as soon as practicable to preserve jurisdiction. Jurisdiction may attach by apprehension, imposition of restraint, or preferral of charges. Once attached, jurisdiction continues for purposes of trial, sentence, and punishment. See R.C.M. 202(c).

2.14.3. Retired Personnel.

2.14.3.1. Retired active duty members who are entitled to receive pay (Article 2(a)(4), UCMJ), retired members of a reserve component receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired reserve component members not receiving pay (see *Morgan v. Mahoney*, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (AFCCA 15 Mar. 1999)), may be tried by court-martial subject to both legal and policy limitations.

2.14.3.1.1. For retired Air Reserve Component (ARC) members, the acts or omissions must have been committed while on active duty, inactive duty training or for ANG members while in federal status and even so, prosecution is ordinarily not appropriate unless their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

2.14.3.1.2. Retired active duty members who are subject to the UCMJ and who commit misconduct after retirement will not ordinarily be tried by court-martial unless:

2.14.3.1.2.1. A federal, state or local jurisdiction is not available for prosecution; and

2.14.3.1.2.2. The misconduct clearly links them to the military or is adverse to a significant military interest of the United States. See DAFPD 51-2.

2.14.3.2. If a retiree meeting the qualifications of [paragraph 2.14.3.1](#) is to be recalled to active duty to be tried by court-martial, the commander seeking the recall should consider the location of the alleged offense, whether the alleged offense occurred outside the United States, the current location of the retired member, and the current location of the victim, if any, to determine the appropriate recall authority. Retired DAF members recalled to active duty by SecAF may be tried by a court-martial convened by a DAF convening authority and confined in accordance with applicable instructions.

2.14.3.3. If SecAF approval is sought, SecAF approval to recall a retired member to active duty must be obtained prior to preferral of charges.. The supporting legal office of the command seeking the member's recall forwards the request for SecAF approval via functional channels to JAJI. The request should include coordination with the GCMCA and additional information addressing the policy implications described in [paragraph 2.14.3.1](#). If there is an immediate issue regarding the statute of limitations (Article 43,

UCMJ) and the time prescribed by the relevant statute of limitations is about to expire, the SJA coordinates immediate preferral of charges and a request for SecAF approval of the retiree's recall as soon as possible.

2.15. Jurisdiction Involving Federal Agencies.

2.15.1. Department of Justice. As with state (non-federal) nonexclusive jurisdiction, the determination of whether civilian federal or military authorities will exercise jurisdiction is made through consultation or prior agreement between appropriate DAF and civilian authorities. Convening authorities and SJAs foster relationships with local civilian authorities with a view toward maximizing DAF jurisdiction. See DoD Instruction (DoDI) 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, which sets forth DoD and Department of Justice responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction.

2.15.2. United States Secret Service. The service exercises primary investigative responsibility for all cases involving alleged threats against the President or successors to the Presidency. 18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*. The Chief, JAJM, or a designee, coordinates with representatives of the Department of Justice and the Secret Service to determine which department will exercise jurisdiction in any such case involving a DAF subject.

2.15.3. 18 U.S.C. § 3261 et seq., *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act (MEJA) of 2000)*. Pursuant to MEJA, military members subject to the UCMJ as well as civilians employed by or accompanying the armed forces outside the United States may be subject to United States civilian federal jurisdiction for offenses committed while overseas. The court-martial convening authority with jurisdiction reports any potential MEJA cases through command channels, and the supporting SJA reports the same through functional channels to JAJM. JAJM coordinates potential MEJA cases with the DoD Office of General Counsel and Department of Justice. See AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction Over Civilians and Dependents Overseas*, for guidance and procedures in MEJA cases.

2.15.4. Federal Criminal Proceedings. A member pending trial or who has been tried by a federal court may not be tried by court-martial or subjected to NJP proceedings for the same act or omission. Unlike exercise of jurisdiction by a state or foreign authority, exercise of jurisdiction by federal civilian authorities prevents exercise of jurisdiction by military authorities for the same act or omission. See R.C.M. 907(b)(2)(C). See [paragraph 2.16.4](#) for further guidance.

2.16. Jurisdiction Involving State or Foreign Prosecution Interest (R.C.M. 201(d)).

2.16.1. Courts-martial have exclusive jurisdiction of purely military offenses. However, when a member is subject to both the UCMJ and state (non-federal) or foreign jurisdiction for substantially the same act or omission, the determination of which sovereign shall exercise jurisdiction should be made through consultation or prior agreement between appropriate authorities (e.g., memoranda of agreement, status of forces agreements). Convening

Authorities and SJAs should foster relationships with local civilian authorities with a view toward maximizing DAF jurisdiction. For cases within the United States involving sexual assault, see [Section 10A](#).

2.16.1.1. Members who are being investigated by a civilian jurisdiction which has not relinquished jurisdiction, as well as members pending trial or who have been tried by a state or foreign court, should not ordinarily be tried by court-martial or subjected to NJP for the same act or omission, except upon SecAF approval (see [paragraph 2.16.4](#)). This policy is based on comity between the federal government and state and foreign governments and is not intended to confer additional rights upon the accused. See *United States v. Kohut*, 44 M.J. 245 (CAAF 1996).

2.16.1.1.1. This limitation does not apply to action or vacation proceedings under R.C.M. 1108 and MCM, Part V, paragraph 6a(4)-(5).

2.16.1.1.2. A member may be considered to be “pending trial” when state or foreign authorities have expressed their intention to try the member, even if formal charges have not yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

2.16.1.1.3. A member is deemed “tried” if jeopardy has attached. Follow the state or foreign law to determine when this occurs.

2.16.1.1.4. A member is not deemed “tried” if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of conditions as an alternative to prosecution, without an initial determination of guilt. If deferral, abeyance, or diversion is conditional and the member remains subject to prosecution if a condition is violated, UCMJ action should not be taken until after the deferral, abeyance, or diversion is completed.

2.16.1.1.5. A member is not deemed “tried” in situations where jeopardy attached without resolution of the case, if further prosecutorial action is authorized under state or foreign law (for example, in the case of a mistrial).

2.16.1.2. If the state or foreign proceedings end without jeopardy attaching or if the DAF receives clear indication in writing from an authorized state or foreign government representative that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the DAF may proceed with court-martial or NJP.

2.16.2. When a member is subject to both the UCMJ and state or foreign jurisdiction, the installation commander and SJA should determine whether the exercise of jurisdiction is in the best interests of the DAF. Some factors to consider in making this determination include, but are not limited to location of offense, lead investigative agency, status of victims and witnesses, and public attention.

2.16.2.1. If the exercise of jurisdiction is sought, DAF authorities (normally the SPCMCA SJA or delegate) contact appropriate civilian authorities; notify them of the DAF desire to exercise jurisdiction; and, if civilian authorities have primary jurisdiction, request a waiver of state or foreign jurisdiction (additional procedures for seeking jurisdiction from foreign authorities are discussed in [paragraph 2.16.3](#)).

2.16.2.2. DAF requests for waivers of jurisdiction from state or foreign authorities must be in writing with written responses requested.

2.16.2.3. If state or foreign authorities decline or waive the right to exercise jurisdiction, the DAF may proceed with action, up to and including court-martial or NJP.

2.16.2.4. The written request and response shall be maintained as part of the case file and documented in AMJAMS.

2.16.3. Foreign Criminal Jurisdiction. The procedures to determine whether United States military authorities or foreign (host nation) authorities will exercise criminal jurisdiction over military members present in foreign countries vary from country to country. The Status of Forces Agreement, or a similar agreement, should address procedures for dealing with nonexclusive or concurrent jurisdiction offenses. Comply with AFI 51-402, *International Law*.

2.16.4. Secretarial Approval. Only SecAF may approve initiation of court-martial or NJP action against a member previously tried by a state or foreign court for substantially the same act or omission, regardless of whether the member was convicted or acquitted of the offense. Approval by SecAF will be granted in only the most unusual cases when justice and good order and discipline can be satisfied in no other way. A request may be submitted only after the member has been tried in a state or foreign court. Submit the request with full justification and commanders' indorsements through functional channels to JAJI.

2.16.5. Department of Defense (DoD) Civilian Employees, Department of Defense (DoD) Contractor Personnel, and Other Persons. For authorities and procedures related to DoD civilian employees, DoD contractor personnel, and other persons, refer to AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*.

Chapter 3

MATTERS SPECIFIC TO THE AIR RESERVE COMPONENT

Section 3A—Overview

3.1. Air Reserve Component (ARC) References. ARC is both the Air Force Reserve (AFR) and the Air National Guard (ANG).

3.2. Air Force Reserve Categories. AFR categories are organized exclusively under federal authority (Title 10).

3.2.1. Ready Reserve: The Air Force Ready Reserve is a category of reservist most often called to active duty. It consists of two subcategories, Selected Reserve and Individual Ready Reserve who are available to be involuntarily ordered to active duty in time of war or national emergency, pursuant to 10 U.S.C. § 12301, *Reserve components generally*, 10 U.S.C. § 12302, *Ready Reserve*, and 10 U.S.C. § 12304, *Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency*.

3.2.2. Selected Reserve: Units and individuals within the Ready Reserve approved by the Joint Chiefs of Staff as so essential to initial wartime missions that they have priority over all other reserves. It includes traditional reservists, individual mobilization augmentees (IMA), active guard reservists (AGR), and military technicians.

3.2.3. Individual Ready Reserve (IRR): Individuals who have had some training or who have served previously in the Active Component or in the Selected Reserve, or have some period of their military service obligation remaining. See AFMAN 36-2136, *Reserve Personnel Participation*.

3.2.4. Standby Reserve: Individuals who have a temporary disability or hardship, hold key positions in their civilian jobs, and other certain categories may be on the active status list (ASL) or inactive status list (ISL) of the standby reserve. When authorized by Congress, members of the Standby Reserve may be involuntarily recalled to active duty under 10 U.S.C. 12301 and 12306.

3.2.5. Retired Reserve: The Retired Reserve includes Reservist who are receiving retired pay or Reservists who transfer into the Retired Reserve after qualifying for reserve retirement, but before becoming eligible to receive retired pay. Members of the Retired Reserve may be involuntarily ordered to active duty.

3.3. Personnel Duty Status. Members of the AFR participate in different capacities.

3.3.1. Full Time Support Personnel

3.3.1.1. Air Reserve Technician (ART): Members are full-time federal civil service employees of an Air Force reserve unit and serve in dual roles as both civilians and Reserve Airmen. ART are generally required to maintain membership in the Selected Reserve as a condition of their employment.

3.3.1.1.1. Active Guard Reserve (AGR) under Title 10: Reservists or Guard members on full-time active duty (AD) for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing or training ARC units, or

performing duties prescribed in 10 U.S.C. § 12310. (**Note:** AGRs do not usually mobilize; they are the steady force that stays to organize, administer, recruit, instruct, or train others.)

3.3.2. Traditional Reservist (TR/CAT A): Assigned to stand-alone reserve units. CAT A personnel require one weekend of inactive duty training a month, referred to as unit training assembly, and two weeks annual training.

3.3.3. Individual Mobilization Augmentees (IMAs) (CAT B): Attached to and augment active component and government agency missions and are rated by active component or government agency supervisors.

3.4. Air National Guard Overview. ANG personnel have a dual role based on the Militia Clause of the U.S. Constitution, Article 1, Section 8. ANG personnel are members of “two overlapping but legally distinct organizations.” *Perpich v. Dept of Defense*, 496 US 334, 345 (1990) (quoting *Perpich v. Dept of Defense*, 666 F. Supp. 1319 (D. Minn. 1987)). ANG personnel are members of their organized federally-regulated State Militia and they are Reserve members of the Air Force, except for the District of Columbia ANG which is exclusively federal and operates under federal control at all time. ANG personnel serve in three separate duty statuses: State Active Duty; Title 10, and Title 32. When ANG personnel are performing State Active Duty, the duty is purely a state function in their State Militia; therefore they are not subject to Title 10 (including the UCMJ). When ANG members are in Title 10 status, the duty is purely federal service and the member is generally relieved of all National Guard duty in accordance with 21 USC 325(a). Title 32 is a mixture of federal and state service, which includes Full Time National Guard Duty (FTNGD) for training and operational support, and as AGR members, are under the command and control of their Governors and Adjutant Generals (TAGs). Therefore, for purposes of this instruction, ANG personnel on State Active Duty or in a Title 32 status are not subject to the UCMJ.

3.5. Air National Guard Roles.

3.5.1. Federal Role (Title 10): The mission is to maintain well-trained, well-equipped units available for prompt mobilization under Title 10 of the U.S.C. during war and national emergencies. Generally, SecAF may not order to active duty a member of the Air National Guard of the United States (for the remainder of this chapter, ANG personnel in this status will be designated as members of ANGUS) without the consent of the governor or other appropriate authority of the state concerned. 10 U.S.C. 12301(d). ANGUS personnel in Title 10 federal status are subject to the UCMJ, the contents of this chapter and Department of the Air Force Instructions.

3.5.2. State Role. Service in this capacity occurs when the governor activates National Guard personnel to State Active Duty (for the remainder of this chapter, ANG personnel in this status will be designated as members on SAD) in response to natural or man-made disasters or Homeland Defense missions. National Guard personnel on SAD are under the command and control of their State Governors and TAGs and subject only to the state’s code of military justice (i.e., not the UCMJ or this instruction). See DoDI 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*.

3.5.3. FTNGD or FTNGD-AGR (Title 32). The mission is to provide trained, organized and disciplined units and individuals to protect life, property, and preserve peace, order and public safety within the state or territory by providing emergency relief support, search and rescue,

support to civil defense authorities and counterdrug operations. Duties performed while in Title 32 status typically include inactive duty for training (IDT/drill weekend) annual training and full-time ANG duty. FTNGD or FTNGD-AGR, 32 USC 502, personnel are under the command and control of their State Governors and TAGs subject to the state's code of military justice (i.e., not the UCMJ or this instruction). See DoDI 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*.

Section 3B—Jurisdiction, UCMJ Authority, and Recall Process

3.6. Court-Martial Jurisdiction over ARC Members. ARC members meeting the requirements of Article 2, UCMJ, are subject to UCMJ jurisdiction for NJP, and general, special, and summary courts-martial for offenses committed while in federal status, on active duty, or on IDT for AFR members. For guidance on NJP, see DAFI 51-202, *Nonjudicial Punishment*. **Note:** Federal active duty statuses for ANGUS personnel may include active duty for training (ADT), active duty other than training (ADOT) which includes operational support to the active component (ADOS-AC) or active duty operational support to the reserve component (ADOS-RC), and National Guard Bureau (NGB). See Article 2(a)(3), UCMJ, for further guidance. **Note:** For ARC members, review the member's orders to determine the status (e.g., annual tour or IDT, etc.) and the authority for the orders (e.g., Title 10, Title 32, state authority, etc.). ANG members' orders may have a clause that auto-converts orders from one status to another, so it is vital to review orders to identify the member's status as early into the investigation as possible to identify whether the military has prosecutorial jurisdiction over the member.

3.6.1. Concurrent Nature of Jurisdiction. Jurisdiction pursuant to [paragraph 3.7](#) is concurrent jurisdiction to be shared between the command chain of the relevant ARC unit and the relevant Regular Air Force unit or host command. Attachment for the exercise of court-martial convening authority does not serve to divest any commander from the exercise of such authority over a member of an Air Force or Space Force tenant unit or Air Force or Space Force element or a member of the ARC.

3.6.2. Exercise of Court-Martial Jurisdiction over ANGUS Members. All ANGUS members are assigned to the 201st Mission Support Squadron (MSS) and are attached for ADOT or ADT to the relevant Regular DAF unit or host command.

3.6.2.1. Convening authorities generally will reside with the Regular Air Force unit, host command, or with that attached Regular DAF unit host command's NAF/FLDCOM. Moreover, the exercise of convening authority by the Regular DAF host command ensures resolution of military justice matters expeditiously (bearing in mind due process considerations of the accused and the interest of victims in timely resolution), preserves resources, and retains command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the DAF.

3.6.2.2. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined. Accordingly, prior to taking judicial action against an ANG member, legal offices, commanders, and convening authorities at all attached Regular DAF unit or host commands must coordinate with 201 MSS through ANGRC (NGB). Correspondence can be directed to NGB.CC.201MSS.ADCON.Org@us.af.mil. Such coordination is required to ensure jurisdiction properly attaches. **Note:** Attached/host command legal office coordination with the National Guard Bureau, Office of the General

Counsel (NGB-GC) is required; however, the NGB-GC is not an active duty SJA, but a legal advisor assigned to support 201 MSS/CC in ensuring appropriate Total Force Discipline with regard to current and former ANGUS members.

3.6.3. Duration of Jurisdiction. Once court-martial jurisdiction attaches for an offense, an accused remains subject to the UCMJ for that offense through the execution and enforcement of a sentence, or, if not sentenced to confinement, until such time as the member is no longer in a federal status.

3.6.3.1. AFR members may be involuntarily ordered to active duty as necessary if not in federal status, on active duty, or in IDT status when the offense is discovered. Once jurisdiction attaches in accordance with R.C.M. 202(c), an AFR member may be held on active duty pending disposition of offenses or may be released to reserve status and recalled as necessary for imposing restrictions on liberty in advance of trial, preferral and referral of charges, preliminary hearing, trial by general or special court-martial, and initial entry into confinement, if adjudged. See R.C.M. 204(b). Prior to holding the member on or recalling the member to active duty, the servicing SJA must consult with JAJ/JAJI and the member's Reserve chain of command through AFRC/JA.

3.6.3.2. ANGUS members are subject to UCMJ jurisdiction while on Title 10 orders, in accordance with R.C.M. 202(c). However, ANGUS orders cannot be administratively extended for purposes of investigations into UCMJ violations.

3.6.3.2.1. When ANGUS have or are about to revert to a State or Title 32 status, the previously attached Regular DAF unit or host command legal office must contact the NGB-GC, who is the legal advisor detailed to the 201 MSS, Air National Guard Readiness Center (ANGRC) at Joint Base Andrews, to discuss the timing of exercising jurisdiction and options for maintaining jurisdiction.

3.6.3.2.2. If the attached Regular DAF unit or host command will not be able to complete UCMJ disciplinary action by NJP or court-martial before an ANGUS member's status reverts to a non-federal status, the Regular DAF unit or host command should contact the SJA for the Regular Air Force or Space Force unit that is geographically closest to the member's home state ANG wing. The two Regular DAF units should consider whether it would be appropriate to transfer the case, including its AMJAMS entry, to the geographically closer installation in order to complete any necessary military justice actions, including involuntarily recalling that ANG member to active duty for NJP or court-martial. Ordinarily the case should transfer to the installation geographically closer to the member. **Note:** Nothing in this paragraph is intended to limit concurrent jurisdiction or otherwise inhibit the ability of any other convening authority from exercising convening authority (and its ancillary recall authority, if applicable) over the ANG member.

3.6.4. Jurisdiction over Separated/Retired Members.

3.6.4.1. See [paragraph 2.16.1](#) and [paragraph 2.16.2](#) for effects of completion of Regular DAF Military Service.

3.6.4.2. A member separated or discharged from the Regular DAF prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the service member retains military status in the ARC.

3.6.4.3. Retired ARC members receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired ARC members not receiving pay (see *Morgan v. Mahoney*, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (AFCCA 15 Mar. 1999)), may be tried by court-martial for acts or omissions committed while on active duty or inactive duty training or in federal status, if their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

3.6.5. Responsible Regular DAF Command.

3.6.5.1. AFR members are attached to the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a).

3.6.5.2. ANG members who commit UCMJ offenses while in federal status or on Title 10 orders, will ordinarily be tried by the Regular DAF unit to which they are assigned or attached. Once recalled to federal status, ANG members not assigned or attached to a Regular DAF unit will be attached to the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a).

3.6.5.3. Mobilized or deployed ARC members. The organizational commander exercising Operational Control (OPCON) over the unit/organization to which a recalled or activated reservist is assigned or attached for duty (at the mobilized or deployed location) has concurrent UCMJ punishment authority. However, the deployed commander will confer with the ARC Airman's commander at his or her permanently assigned duty station before taking any action. See AFI 10-402_ANGSUP, *Mobilization Planning*, paragraph 5.5..

3.7. Court-Martial Considerations for ARC Members.

3.7.1. General and Special Courts-Martial.

3.7.1.1. In ARC member cases, trial counsel must be prepared to introduce sufficient evidence to establish in personam (personal) jurisdiction over the accused at the time of the offense. **(T-0)**. See R.C.M. 307; *United States v. Miller*, 78 M.J. 835 (ACCA 2019); *United States v. McDonagh*, 14 M.J. 415, 422 (C.M.A. 1983); *United States v. Laws*, 11 M.J. 475 (C.M.A. 1981).

3.7.1.2. ARC members must be on active duty prior to arraignment at a general or special court-martial. **(T-0)**. See R.C.M. 204(b)(1).

3.7.2. Summary Courts-Martial.

3.7.2.1. ARC members may be tried by SCM during the member's period of Title 10 active duty or normal period of IDT for reservists.

3.7.2.2. All punishments remaining unserved at the end of a period of Title 10 active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of IDT or Title 10 active duty. See Article 2(d)(4), UCMJ and R.C.M. 204(b)(2).

3.8. Recall to Duty Considerations for ARC Members.

3.8.1. In order for an ARC member to be adjudged confinement or any other restriction on liberty, SecAF must approve the recall to active duty. See Article 2(d)(5), UCMJ. **(T-0)**.

3.8.2. An ARC member must be in a Title 10 federal status for the following stages in the court-martial process:

3.8.2.1. While in pretrial confinement; **(T-0)**.

3.8.2.2. Preferral (**Note:** When preparing the DD Form 458, *Charge Sheet*, for ARC members serving on extended active duty, use the organization to which they are attached for active duty in Block 5); **(T-0)**.

3.8.2.3. Article 32 preliminary hearing; **(T-0)**.

3.8.2.4. Service of referral documents; **(T-0)**. and

3.8.2.5. Any court-martial proceeding at which the accused has a right to be present, to include arraignment and sentencing proceedings. **(T-0)**.

3.8.3. An ARC member confined pursuant to a sentence imposed by a court-martial having in personam jurisdiction over the member at the time of trial remains subject to the UCMJ while in a military confinement facility. See Article 2(a)(7), UCMJ.

3.9. ARC Member Recall Authority.

3.9.1. Recall Authority for AFR Members. Subject to the consultation requirement of [paragraph 3.7.3.2.1](#) the following individuals may recall a Reserve member to active duty:

3.9.1.1. A GCMCA for the Regular DAF unit to which the ARC member is attached for training purposes;

3.9.1.2. A GCMCA for the Regular DAF unit in which the ARC member performed federal service, active duty, or inactive duty training when the offense occurred;

3.9.1.3. A GCMCA for the Regular DAF host unit, as designated in the applicable host-tenant support agreement, if the ARC member is assigned to an ARC unit for training purposes or was attached to such a unit when the offense occurred;

3.9.1.4. AFRC/CC, 4 AF/CC, 10 AF/CC, or 22 AF/CC for ARC members assigned or attached to their respective commands; or

3.9.1.5. A GCMCA for the Regular DAF host command described in paragraphs [2.5.1](#) and [2.5.5](#) See Article 2(d), UCMJ.

3.9.2. Recall Authority for ANG Members. If an ANG member reverts to Title 32 or state status before UCMJ action commences, the member must be recalled to active duty under Title 10 U.S.C. § 802(d), *Persons subject to this chapter*. **(T-0)**.

3.9.2.1. Subject to the consultation requirement of [paragraph 2.5.5](#), the following individuals are authorized to order the recall of an ANG member to Title 10 active duty:

3.9.2.1.1. A GCMCA for the Regular DAF unit to which the member was attached for duty;

3.9.2.1.2. A GCMCA for the Regular DAF unit to which the member was attached for training;

3.9.2.1.3. A GCMCA for the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands; or

3.9.2.1.4. A GCMCA pursuant to an agreement with the former attached supported unit commander or attached unit training commander.

3.9.2.2. Legal Office Coordination. The local legal office supporting the relevant SPCMCA will coordinate with the GCMCA legal office and the NGB-GC legal advisor to the 201 MSS/CC when determining whether ANG member recall to active duty is appropriate in each applicable case. If the GCMCA concurs with the SPCMCA legal office that an ANG member's recall to active duty is appropriate, that local SPCMCA legal office will work with the NGB-GC legal advisor on the process to involuntarily recall the ANG member to active duty.

3.10. Additional Process Requirements to Recall an ANG Member.

3.10.1. The GCMCA, in consultation with its SJA, evaluates recall recommendations made by the subordinate unit and legal office. In order to proceed with recall, the GCMCA SJA concurs with the local SPCMCA SJA's evaluation of the evidence that establishes a probable cause standard has been met and that NJP or court-martial is an appropriate UCMJ process.

3.10.2. The installation legal office informs the NGB-GC legal advisor of the GCMCA SJA concurrence and GCMCA intent to recall the ANG member. The NGB-GC legal advisor forwards the recommendation to the 201 MSS/CC for concurrence.

3.10.3. Upon concurrence, the 201 MSS/CC requests the applicable state TAG's documented consultation and concurrence with the decision to seek the ANG member's involuntary recall to active duty. See [paragraph 3.12.7](#) for documents which must be forwarded to TAG. Upon receipt of the TAG's memorandum, the NGB-GC legal advisor forwards the memorandum to the installation legal office staffing the recall package for continued processing of the request.

3.10.4. The recall request is routed through JAJI to the SecAF for approval in accordance with [paragraph 3.12](#). **Note:** This step may be skipped if there is no intent to seek confinement in sentencing.

3.10.5. The GCMCA signs the order recalling the member to Title 10 status for UCMJ action;

3.10.6. AF/A1M provides the man days for the orders under 10 U.S.C. § 802(d);

3.10.7. The member's home station creates the pay order(s);

3.10.8. Travel Funding for Recalled Member. The GCMCA who recalls the member to active duty funds travel-related entitlements in accordance with the Joint Travel Regulations, [Chapter 3](#), Part A. <https://www.defensetravel.dod.mil/site/travelreg.cfm>

3.10.9. Man Days and Travel Funding for Military Witnesses. The convening authority that convenes a court-martial requiring the involuntary recall to active duty of ANG members for the purpose of appearing as military witnesses is responsible for providing man days for active duty military orders and any accompanying travel-related entitlements. The NGB-GC legal advisor should be contacted well in advance of trial to assist in facilitating the placement of ANG members on active duty orders for the purpose of appearing during courts-martial as military witnesses. **Note:** If ANG members are being required to travel and appear at a court-martial in military uniform as witnesses they must be activated using DAF military personnel appropriations and travel funding.

3.11. Secretarial Approval of ARC Member Recall for Court-Martial. Forward requests for SecAF approval of an order to recall an ARC member for court-martial via functional channels to JAJI. The request should be made prior to preferral of charges. SecAF must approve the recall prior to referral of charges in order to preserve confinement as a punishment option. Requests forwarded to JAJI for processing shall include, at a minimum, the following:

- 3.11.1. Concurrence of the GCMCA for the DAF unit convening the court-martial.
- 3.11.2. The preferred or anticipated charges and specifications. If charges have been preferred, include a copy of the charge sheet and personal data sheet.
- 3.11.3. A summary of the evidence relating to each offense. Include copies of any reports of investigation, witness statements, or documentary evidence.
- 3.11.4. A description and copies of any records of the member's prior court-martial convictions and NJPs, if any.
- 3.11.5. Whether the member refused an offer of NJP for any of the charged offenses at issue in the case.
- 3.11.6. The member's background, including civilian employment, family circumstances, and character of military service.
- 3.11.7. Documentation of consultation with the member's ARC chain of command. **Note:** For ANG members, the state TAG must be informed and consulted. Consultation requires the state TAG or chain of command be provided with the general nature of the charges, copies of all investigative reports, and other evidence in the government's possession used to support a finding of probable cause.
- 3.11.8. A written legal review by the wing-level legal office requesting the recall. Additional written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Otherwise, written coordination indicating concurrence is sufficient.

3.12. NJP Jurisdiction Over ARC Members. Refer to DAFI 51-202 for jurisdictional considerations and processing of ARC members.

3.13. Other Administrative Action. Refer to AFI 36-2907, *Adverse Administrative Actions*, for disciplinary matters not rising to NJP or court-martial.

Section 3C—Investigations and Initial Disposition

3.14. Investigations Involving ARC Members.

- 3.14.1. Investigations are conducted by the applicable DAF law enforcement.
- 3.14.2. The legal office for the responsible Regular DAF command over the ARC member is responsible for advising law enforcement and the command on the case.
- 3.14.3. NGB-GC and ANG wing legal offices are not responsible for advising law enforcement, or the Regular DAF commander, or the convening authority on case.
- 3.14.4. Investigation considerations for AFR members. Upon discovery, the servicing Regular DAF legal office should consult with AFRC/JA for specific status considerations.

3.14.5. Investigation Considerations for ANG members.

3.14.5.1. When ANG members are investigated, the legal office servicing the DAF investigative agency must notify NGB-GC. When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to JAJM and document the rationale for the delayed entry in AMJAMS case notes.

3.14.5.2. Although service members may be involuntarily retained beyond their expiration of term of service to undergo court-martial, there is no authority to administratively extend an ANGUS member's active duty orders for the purpose of completing an investigation.

3.15. Search Authorizations (M.R.E. 315). Commanders acting as search authority for Air Force Reserve Command installations must be serving in a Title 10 status to authorize a search. See [Section 6A](#) for general information on search authorizations.

3.16. Initial Disposition Authority for Qualifying Sexual Assault Allegations Involving ARC Members. For general instructions and qualifying offenses, see [paragraph 10.2](#).

3.16.1. Servicing Legal Office. The servicing legal office responsible for advising the Regular DAF SPCMCA and GCMCA regarding the initial disposition is the Regular Air Force or Space Force legal office that services the Regular DAF SPCMCA to whom the accused is assigned, unless such provision of advice has been withheld to the Regular DAF GCMCA legal office level.

3.16.1.1. Air Force Reserve Members. Air Force Reserve Command (AFRC) is not responsible for the processes defined in [Section 10B](#). However, servicing Regular DAF legal offices should consult with AFRC/JA prior to making a recommendation as to initial disposition.

3.16.1.2. Air National Guard Members. The 201 MSS, Air National Guard Readiness Center is not responsible for the processes defined in [Section 10B](#). However, servicing Regular DAF legal offices should consult the 201 MSS/CC and NGB-GC prior to making a recommendation to the SPCMCA as to initial disposition of allegations of sexual assault allegations.

3.16.2. AFR members accused of committing a covered offense in [paragraph 10.2](#) while in Title 10 status. The responsible SPCMCA will obtain the victim's views on jurisdiction and disposition. See [Section 10A](#). The responsible GCMCA will conduct the review of initial disposition decision. See [paragraph 10.3](#).

3.16.3. ANG members accused of committing a covered offense in [paragraph 10.2](#) while on Title 10 active duty. The responsible SPCMCA will obtain the victim's views on jurisdiction and disposition if the member has been previously recalled to Title 10 active duty status or has remained on Title 10 active duty status. See [Section 10A](#). The responsible GCMCA will conduct the review of initial disposition decision. See [paragraph 10.3](#) In the event the offense occurred while the member was in Title 32 or civilian status, the active duty SPCMCA and GCMCA are not subject to the requirements of Sections [10A-10D](#).

3.16.3.1. If the following conditions apply, the local legal office should contact JAJI for guidance:

- 3.16.3.1.1. The ANG member committed the offense while in Title 10 active duty status;
 - 3.16.3.1.2. The ANG member was subsequently released from Title 10 active duty status;
 - 3.16.3.1.3. The ANG member has not been recalled; and
 - 3.16.3.1.4. No convening authority listed in [paragraph 3.6.2](#), has indicated an intent to recall the member for either NJP or court-martial.
- 3.16.4. If the initial disposition decision is not to refer the qualifying sexual assault allegation to a court-martial, the responsible legal office will make the required notifications.
- 3.16.5. In cases where the convening authority with initial disposition authority (IDA) decides to dispose of qualifying sexual assault offenses as listed in [paragraph 10.2](#), the servicing legal office must notify the 201 MSS/CC through NGB-GC of the decision. If applicable, the servicing legal office may also recommend adverse administrative action which may be appropriately taken by either the 201 MSS/CC, the ANG member's local state wing, or unit commander.

Section 3D—Pre-Trial Matters

3.17. Detailing ARC Members to Courts-Martial (R.C.M. 501, 502, 503, 912A; Articles 25, 29, UCMJ). For courts-martial involving an AFR accused, convening authorities should consider detailing AFR members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502.

3.18. IMDC Requests. Only ARC judge advocates on extended Title 10 active duty tours can be requested and may be made available. The reasonable availability of ARC judge advocates is assessed in the context of R.C.M. 506(b)(1) and [paragraph 15.6](#) (i.e., the restrictions apply to the active and reserve components alike). ARC judge advocates must be in Title 10 status at all times when performing as IMDC. Requests for ARC judge advocates are processed in accordance with [paragraph 15.6](#).

3.19. Plea Agreement Considerations with ARC Members. As with expiration term of service (ETS) for RegAF members, if an ARC member's Title 10 status expires (e.g., members recalled to Title 10 active duty in order to be tried by court-martial), there are no forfeitures to waive after the status expires. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond their expiration of Title 10 status may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. **(T-0).** See *United States v. Perron*, 58 M.J. 78 (CAAF 2003).

Section 3E—Post-Trial and Punishment Considerations for ARC Members.

3.20. Post-Trial and Punishment Considerations for ARC Members.

- 3.20.1. Confinement and Restrictions on Liberty. Without SecAF approval of the order to active duty, an ARC member recalled to active duty for trial by court-martial may not be

sentenced to confinement or required to serve a punishment consisting of any restriction on liberty during the recall period of duty. Article 2(d)(5), UCMJ. A punishment of restriction to specified limits may be served only during normal periods of inactive duty training or active duty.

3.20.2. Forfeitures.

3.20.2.1. Member Status. An ARC member sentenced to post-trial confinement should not be placed in an active duty pay status beyond the EoJ.

3.20.2.2. Active Duty Pay. An ARC member in confinement is ordinarily not entitled to pay unless ordered on active duty by statute (mission-related need or disciplinary purposes under 10 U.S.C. § 802(d)), or necessarily incident to an authorized expenditure.

3.20.2.3. Legal Office Responsibilities. Legal offices must pay particular attention to the ARC member's status after EoJ or, if applicable, entry into confinement. If the ARC member is removed from active duty status after the EoJ, it may limit the relief a convening authority may provide to the member or the member's family under R.C.M. 1103, 1109-1110 (e.g., it may limit the ability of the convening authority to waive forfeitures for the benefit of the dependents).

3.20.3. Involuntary (Required) and Excess Leave. See [Section 20M](#) for general guidance on excess leave. ARC members may be removed from active duty status after serving an approved sentence of confinement leave and recalled as necessary to complete appellate review rather than being placed in excess. AFRC/JA and DAF/A1M should be consulted for further guidance on excess leave for ARC members. Only a GCMCA may involuntarily recall an ANG member to active duty under 10 U.S.C. § 802(d) for purposes of appellate review by the GCMCA.

3.20.4. Release from Active Duty. At the final adjournment of the court-martial, the ARC member ordered to active duty for the purpose of conducting disciplinary proceedings should be released from active duty within one duty day, unless the order to active duty was approved by SecAF and confinement was adjudged.

3.20.5. Unserved Punishment.

3.20.5.1. AFR members. Any other unserved punishments, including a restriction on liberty, may be served during subsequent periods of inactive duty training or active duty. See Article 2(d)(5), UCMJ; R.C.M. 204(b) and 1003(c)(3).

3.20.5.2. ANG members. ANG members may not be placed on NGB or ANG funded orders for the sole purpose of serving unserved punishments, including any restriction on liberty.

Section 3F—Victim Witness Assistance Program and ARC Members

3.21. General Provision. For general instructions see DAFI 51-207, Chapter 2.

3.22. Determining the Appropriate Local Responsible Official (LRO).

3.22.1. The LRO of an ARC member in federal status who allegedly committed an offense is the installation commander or SPCMCA of the Regular DAF unit to which the ARC member is attached.

3.22.2. The LRO of an ARC member in federal status who allegedly committed an offense and is not assigned or attached to a Regular DAF unit (e.g., stand-alone AFR or ANG base) is the installation commander of the nearest DAF unit.

Section 3G—ARC Judge Advocate Requirements

3.23. ARC Judge Advocates Serving as Counsel. The requirements of certification and designation set out in [paragraph 15.4](#) apply to AFR judge advocates. Only those AFR judge advocates assigned as Circuit Trial or Circuit Defense Counsel may be certified annually. Other AFR judge advocates are certified according to AFI 51-101, *The Air Force Judge Advocate General's Corps (AFJAGC) Operations, Accessions, and Professional Development*. Air Force Reserve judge advocates must be on active duty or performing inactive duty training to be detailed as trial counsel or military defense counsel, and they must be in Title 10 status at all times when performing trial duties. [Paragraph 15.6](#) provides additional guidance on AFR judge advocates performing IMDC duties.

3.24. ARC Judge Advocates Serving as PHOs. Refer to [paragraph 12.2.1](#) for general qualifications of a PHO. ARC judge advocates may serve as a PHO while on Title 10 federal status or performing inactive duty training. ANG judge advocates may serve as a PHO but must be on Title 10 orders. (T-0). Article 136(b), UCMJ, authorizes ARC judge advocates to administer oaths while on active duty or performing inactive duty training.

3.25. ARC Judge Advocates Serving as Summary Court-Martial Officers (SCMOs). Refer to the Summary Court-Martial Guide on the VMJD for guidelines in conducting Summary Courts-Martial.

3.25.1. An AFR on active duty who is a commissioned officer may serve as an SCMO under R.C.M. 1301. AFR judge advocates on inactive duty for training are not on active duty and cannot serve as SCMOs.

3.25.2. An ANG officer serving on active duty in federal status may serve as an SCMO under R.C.M. 1301.

Section 3H—ARC Mandatory Legal Training

3.26. SAPR Program First Responder Training for Legal Personnel. Annual SAPR First Responder Training for Legal Personnel is required for certain legal personnel (judge advocates, victim and witness assistance program personnel, legal assistance attorneys, and trial counsel in accordance with DoDI 6495.02, Volume 1, Enclosure 10, paragraph 2, *Sexual Assault Prevention and Response (SAPR): Program Procedures*). See DAFI 51-207, Chapter 4 for additional information.

3.26.1. ARC judge advocates who practice in military justice (including Article 32 PHOs) or legal assistance (this may include VCs and defense counsel) or who serve as trial counsel are required to complete the annual training.

3.26.2. ARC paralegals who provide legal assistance support or directly contribute to a VWAP are required to complete the annual training.

3.27. Article 137 Briefing Requirements for ARC Members.

3.27.1. ARC enlisted members are required to receive the Article 137 briefing within 14 calendar days of initial entrance on a duty status with an ARC, again after completing basic training, and again at the time of reenlistment. **(T-0).**

3.27.2. ARC officers are required to receive the Article 137 briefing within six months of commissioning in a reserve component. **(T-0).**

3.27.3. Training Wing SJAs ensure officers who commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training.

Section 3I—ARC AMJAMS Issues

3.28. Obtaining Inputs.

3.28.1. Demographic Data. Demographic data may not automatically populate for members of the ARC. For AFR members, the servicing Regular DAF legal office should contact the unit to which the member is assigned or attached, which may be either an active duty or reserve unit, to request the member's record review RIP. For ANG members, the servicing legal office should contact 201 MSS and NGB-GC to obtain such data.

3.28.2. Command Inputs. The servicing Regular DAF legal office should periodically contact the member's ARC chain of command for AMJAMS inputs. For ANG members, this means contacting NGB-GC to request substantive inputs.

3.29. Special Interest Reports (SIRs). The servicing Regular DAF legal office is responsible for creation, modification, closure, and submission of SIRs in cases for which they are the servicing legal office, including where the members belong to the ARC.

Chapter 4

INITIAL STEPS UPON NOTIFICATION OF A QUALIFYING ALLEGATION: CIP, SVIP, VICTIM SUPPORT, PROTECTIVE ORDERS, AND ADMINISTRATIVE HOLDS

4.1. General Provision. An effective military justice process starts with a timely, thorough, and accurate investigation. Legal office and investigative personnel must develop a collaborative relationship focused on integrating investigative efforts and the legal process. The goal is thorough, case-ready reports of investigation, robust litigation preparation, and timely resolution of military justice cases.

Section 4A—Criminal Investigation and Prosecution (CIP) Capability

4.2. CIP Capability. The CIP capability integrates DAF military legal capabilities and military criminal investigation capabilities at the earliest possible opportunity in cases where the servicing legal office SJA determines a substantive investigation warrants CIP capability activation.

4.3. Composition of the CIP capability. The CIP capability will consist of investigative personnel and the servicing base legal office judge advocates and paralegals. The CIP capability also includes *individually assigned but not detailed* CTC, in those cases where the servicing legal office SJA determines CTC support is warranted. Other personnel may join the capability on a case-by-case basis as necessary at the discretion of the SJA or the CTC, if assigned.

4.3.1. Investigative Personnel. The investigator or agent assigned to an investigation is part of the CIP capability. During the investigative stage of the case and until a decision on disposition (e.g., preferral of charges), the investigator or agent is supported by the other CIP capability members. Once charges are preferred the CIP capability investigator or agent will support the capability's prosecutorial investigation and trial preparation.

4.3.2. Legal Office Personnel. If the servicing legal office SJA determines CIP capability activation is warranted, the servicing legal office SJA must appoint, in writing, the legal office members of the CIP capability, which must consist of at least one judge advocate, one paralegal, and one victim/witness liaison (VWL). Judge advocate, paralegal and VWL members can be designated as a standing capability or may be appointed on a case-by-case basis. SJAs should appoint more experienced judge advocates, paralegals and VWLs to the more complex and serious cases. See [Section 4B](#) regarding Special Victim Investigation and Prosecution (SVIP) capability requirements for certain categories of cases.

4.3.3. CTCs. CTCs are assigned to a CIP capability by either the circuit DTO, or Chief/Director of Operations of JAJG. CTCs will be detailed in appropriate cases pursuant to JAJG guidance. CIP capability CTCs will support and advise as necessary. Once charges are preferred, the CIP capability CTC will continue to provide pretrial and trial advice to the servicing legal office and military criminal investigators. If the CIP capability CTC is detailed as trial counsel to the case, the CTC will be the lead prosecutor and will be supported by the other CIP capability members.

4.4. Activation of CIP Capability.

4.4.1. Initiation of Substantive Investigation. If a report of a criminal offense is made to military law enforcement, such that either Security Forces or OSI initiates an investigation into

the alleged offense, the investigator or agent must notify the servicing legal office of the receipt of the report or allegation within 24 hours.

4.4.2. Receipt of Jurisdiction from Local Authorities. If a criminal report is made to non-DoD law enforcement, such that neither Security Forces nor OSI initiates substantive investigative steps, Security Forces or OSI will notify the servicing legal office SJA within 24 hours of the earlier of either: (1) non-DoD law enforcement cease their investigation and either Security Forces or OSI becomes the primary investigative agency; or (2) the DAF requests and receives jurisdiction from the local authorities.

4.4.3. Within 24 hours of determining a substantive investigation warrants CIP capability, the SJA or designated legal office personnel may request CTC support in accordance with JAJG requirements. The DTO or JAJG will assign a CTC to the CIP capability within 72 hours.

4.5. CIP Capability Process.

4.5.1. Designation and Notification of CIP Activation. In cases where a CTC is requested, no later than one duty day after CTC assignment, the SJA will ensure the membership of the CIP capability is memorialized in writing and that documentation of such is provided to the members of the CIP capability. Where no CTC is requested, the SJA will ensure membership of the CIP capability is memorialized no later than one duty day after CIP activation. This designation and notification may only be made by the SJA or person acting as the SJA.

4.5.2. Case Consultation. Within five duty days of the later of (1) CIP activation; or (2) CTC assignment for a specific case, the CIP capability must conduct a case consultation in order to obtain the facts and circumstances of the alleged offense and discuss initial legal matters relevant to the investigation. The frequency of further case consultations will be determined on a case-by-case basis, at the discretion of the assigned CTC and the servicing legal office SJA. The case update consultations may be conducted in person, telephonically, over video-teleconference (VTC), through e-mail, or utilizing other collaborative tools, as determined by the individual CIP capability. The case paralegal or judge advocate member must document CIP consultation meetings in the case file and AMJAMS entry.

4.5.3. The CIP capability supports the case agent or investigator during the investigative stage of the case.

4.5.3.1. Judge advocate and paralegal members of the CIP capability should avoid direct participation in MCIO activities that may disqualify them from participating as trial counsel or case paralegal on a court-martial. Judge advocates and paralegals should consult with their assigned CTC, circuit DTO, and SJA to identify any activities posing this risk. The capability should properly safeguard all attorney work-product material. See *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Romano*, 46 M.J. 269 (CAAF 1997); *United States v. Vanderwier*, 25 M.J. 263 (C.M.A. 1987).

4.5.3.2. Trial counsel and paralegals provide legal support to the investigator, to include addressing any requests for investigative subpoenas, immunity, or judicial process.

4.5.3.3. The capability will work with investigators during the development of the investigative plan. This includes working with the case agent or investigator in identifying potential criminal offenses for investigation, and comparing the evidence in the case with the elements of proof for a given offense.

4.5.3.4. Judge advocates will coordinate with the case agents or investigators on subject interviews and victim interviews. Preferably, judge advocates should coordinate with the case agents or investigators on all substantive witness interviews.

4.6. Case Development.

4.6.1. The CIP capability and the case agents will continue their collaborative efforts as the investigation proceeds. As appropriate, designated investigative support capability members or judge advocate staff members will attend OSI case review meetings. Likewise, OSI personnel and Security Forces investigators may be invited to attend portions of judge advocate military justice meetings for relevant case updates. Investigative personnel will not be provided with AMJAMS materials or any other attorney work product and legal office personnel must be cautious to avoid discussing work product materials with investigators present.

Section 4B—Special Victim Investigation and Prosecution (SVIP) Capability (DoDI 5505.19, Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs))

4.7. General Provision. The SVIP capability is a specialized CIP capability activated for investigations and cases involving qualifying offenses.

4.8. Qualifying Offenses. Offenses that require activation of the SVIP capability are (1) all unrestricted reports of adult sexual assault (including penetrative and contact offenses); (2) unrestricted reports of domestic violence involving (a) strangulation or suffocation, (b) a dangerous weapon, or (c) resulting in substantial or grievous bodily harm; and (3) child abuse involving sexual assault and/or aggravated assault with grievous bodily harm. **(T-0).**

4.9. Composition of the SVIP Capability.

4.9.1. The SVIP Capability is comprised of specially-trained and qualified CIP members. The SVIP capability will consist of criminal investigative personnel; CTC (In SVIP cases in which the CTC assigned is not a member of the SVU, the CTC will consult with an SVU-CTC on complex or unfamiliar issues); and the following SVIP capability members from the base legal office, at a minimum:

4.9.1.1. Judge advocate(s). At least one judge advocate appointed to the capability must be certified under Article 27(b)(2), UCMJ, unless no certified judge advocate (other than the SJA and DSJA) is assigned to that legal office, or other exceptional circumstances apply. If a certified judge advocate is available but no certified judge advocate is appointed to the SVIP capability, the SJA must indicate the reasons for this in writing.

4.9.1.2. Paralegal(s). At least one paralegal appointed to the capability must have completed the Paralegal Craftsman Course.

4.9.1.3. VWAP victim liaison(s).

4.10. Consultations.

4.10.1. SVIP Initial Notification. Installation legal offices must provide initial notice to JAJG within 24 hours of receiving an allegation involving an SVIP covered offense. This required notice is accomplished via submission of the SVIP Initial Notification Form located on JAJG's

Flite KM page. Directions for submission are included on the form. Within one duty day, JAJG will respond to the installation legal office with a preliminary determination of whether the alleged offense qualifies for SVIP status.

4.10.2. SVIP Capability Case Consultation. For cases with SVIP covered offenses, initial collaboration of the SVIP capability must occur within 48 hours of confirmation from JAJG that an allegation meets criteria of a special victim covered offense. **(T-0)**. Case update consultations must occur on at least a weekly basis thereafter. All consultations may be conducted in person, telephonically, over video-teleconference (VTC), through e-mail, or utilizing other collaborative tools, as determined by the individual SVIP capability. The case paralegal or legal office judge advocate member must document these weekly meetings in the case file and AMJAMS.

4.10.3. Consultation with External Personnel. In addition, the SVIP capability shall consult, as applicable, with the following personnel:

4.10.3.1. Sexual Assault Response Coordinators (SARC) providing services to any victim(s) in an investigation or case.

4.10.3.2. Victim Advocates (VA) providing services to any victim(s) in an investigation or case.

4.10.3.3. Family Advocacy Program (FAP) personnel, to include FAP managers, providing services to any victim(s) in an investigation or case.

4.10.3.4. Domestic Abuse Victim Advocates (DAVAs) providing services to any victim(s) in an investigation or case.

4.11. Required Training for SVIP Capability. All personnel assigned as members of an SVIP capability are required to have completed SAPR training requirements listed in DoDI 6495.02, Volume 1, to include annual training and first responder training. All judge advocates must have also completed the judge advocate training requirements detailed in DoDI 6495.02, Volume 1. Where possible, SJAs should consider appointing judge advocates who have attended specialized training in sexual assault investigations and prosecutions, such as the Sex Crimes Investigations Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia, or other advanced litigation or investigative courses.

4.12. Victim Support. See DAFI 51-207 for further rights, privileges and responsibilities to victims of crime and for special requirements pertaining to victims of certain sexual offenses and crimes of domestic violence.

4.12.1. Victim Access to Legal Assistance. If victims are eligible for legal assistance, the victim liaison must notify them of their eligibility during their initial meeting.

4.12.2. Victim Access to VC. If a victim is not represented by a VC but is eligible for representation, the SVIP Capability is responsible for notifying the victim of eligibility during the initial meeting. This notification will typically be accomplished by the victim liaison.

4.12.3. Victims' Rights. In cases where victims are not represented by a VC, crime victims must be notified by the SVIP capability of their rights, as discussed in DAFI 51-207. Where applicable, this includes the additional rights afforded to victims of sexual assault, as noted in DAFI 51-207. This notification will typically be accomplished by the victim liaison during the initial meeting with the victim.

4.12.4. Child Forensic Interviewers. The SVIP Capability should request specially trained child forensic interviewers to support the investigations and prosecution of complex child abuse and child sexual abuse cases.

4.12.5. Coordination with Key Organizations and Victim Support Services. Legal offices must establish and maintain active liaisons with the following organizations and key individuals to ensure appropriate victim support:

- 4.12.5.1. Local OSI Detachment;
- 4.12.5.2. Local civilian law enforcement and prosecutors' offices;
- 4.12.5.3. Local civilian victim advocacy organizations;
- 4.12.5.4. SARC and SAPR victim advocates;
- 4.12.5.5. VC;
- 4.12.5.6. FAP clinicians, FAP managers, and domestic abuse victim advocates;
- 4.12.5.7. Military chaplain offices;
- 4.12.5.8. Medical and mental health providers; and
- 4.12.5.9. Commanders and first sergeants.

Section 4C—No Contact and Military Protective Orders

4.13. General Provision. There are two types of orders that fall under this category which are issued by military members, to military members: informal “no-contact” orders and formal military protective orders (MPOs). SJAs must ensure that they advise commanders on the issuance of any such order, to include which type of order is appropriate in each situation.

4.14. No-Contact Orders.

4.14.1. Overview. No-contact orders may be verbal or written in memorandum form addressed to the person being given the order to have no contact with another. No-contact orders are appropriately used to temporarily stop communications between two or more parties who are involved in a dispute that does not rise to the level of a criminal investigation or to safeguard the investigative process in a criminal matter. No-contact orders may also be appropriately used as a brief, interim measure when a commander on G-Series orders is unavailable to issue an MPO. No-contact orders can be used CONUS and OCONUS. Generally, no-contact orders should be of limited duration or have a defined beginning and end date.

4.14.2. Issuing a No-Contact Order. No-contact orders may be issued by commanders, first sergeants, and other members senior in rank to the recipient of the order. If a no-contact order is issued verbally, it should be memorialized writing as soon as practicable. **Note:** No-contact orders may not be used with the intent to stop defense counsel from contacting witnesses as part of their duty to investigate changes pertaining to their client.

4.14.3. Limitations of a No-Contact Order. These orders are not enforced by civilian law enforcement. Moreover, unless notified of the existence of the no-contact order, military law enforcement is generally unaware of the existence of any such order and, therefore, cannot act to enforce the order on the installation.

4.15. Military Protective Orders (MPOs).

4.15.1. Overview. An MPO is a formal protective order. MPOs are appropriately used to ensure a person is protected from a subject during criminal investigations and prosecutions. Unlike a no-contact order, an MPO offers broad protections to the person being protected. An MPO affords the commander the opportunity to: limit communications; prohibit a subject or accused from being within a certain physical distance of a protected person or protected person's household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the protected person. MPOs are generally used in all cases involving domestic violence or sexual assault, though commanders may elect to use a no-contact order if more appropriate in the particular case.

4.15.2. Issuing an MPO. MPOs must be completed on DD Form 2873, *Military Protective Order*. (T-0). Only a commander on G-Series orders may issue an MPO.

4.15.3. Member Request for Review of an MPO. Any individual who is either the subject of or party protected by an MPO may request the issuing commander review the MPO or any terms included on the MPO. Such requests are processed in accordance with [paragraph 4.16](#).

4.15.4. Modifying or Rescinding an MPO. Modification and/or rescission of an MPO must be completed via DD Form 2873-1. (T-0). Commanders may modify or rescind an MPO of their own volition, responsive to requests from either of the parties, responsive to the periodic review process outlined in [paragraph 4.16](#), or for other reasons.

4.15.5. Expiration of an MPO. MPOs do not expire and an expiration date may not be listed on the DD Form 2873. Commanders must periodically review MPOs on file with their units in accordance with the procedures outlined in [paragraph 4.16](#).

4.15.6. Effect of Change of Command or Permanent Change of Station. If the member goes TDY or permanently changes duty stations, the gaining commander must be made aware of the existence of the MPO within the 30 days prior to the member's movement. In the event a member with an MPO is transferred to a different unit, the losing commander shall, not later than the date of the transfer, notify the gaining commander of the issuance of the MPO and the individuals involved in the MPO. (T-0). The gaining commander shall make the notification requirements in [paragraph 4.15.9](#) to the local authorities within seven days of gaining the member. (T-0). If the commander changes command or moves to a new duty station, then the gaining commander must be made aware of and provided a copy of the MPO within 30 duty days of taking command. The gaining commander, in either circumstance, must conduct the periodic review described in [paragraph 4.16](#).

4.15.7. Limitations of an MPO. These orders are not enforced by civilian law enforcement; however, civilian law enforcement may notify military law enforcement (e.g., Base Defense Operations Center (BDOC)) if an MPO is violated, provided the MPO is properly indexed in the National Crime Information Center (NCIC) and therefore visible to civilian law enforcement. See [paragraph 4.16.8](#).

4.15.8. Service. Copies of completed DD Forms 2873 and 2873-1 are served on each of the parties involved in the order.

4.15.9. Security Forces Notification. All new, modified, and rescinded MPOs (i.e., DD Forms 2873 and 2873-1) must be forwarded by the issuing commander to Security Forces (or service equivalent on installations where there is no Security Forces presence) for indexing in accordance with AFMAN 71-102 and DoD Policy Memorandum, Placing Military Protective Orders in the National Crime Information Center Protective Order File, dated 26 June 2014 and DoDI 6400.06, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*. On installations where there is a BDOC, MPOs are forwarded to BDOC. On installations where there is no Security Forces presence, MPOs are forwarded to the primary military law enforcement agency on that installation.

4.15.10. Local Authorities Notification. The installation commander is required to notify the civilian authorities of the issuance of any MPO, the identities of individuals involved in the order, any modifications to the order, and the termination of the protective order. **(T-0)**. See 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*. This requirement is satisfied when the issuing commander provides the required information to Security Forces, per [paragraph 4.15.9](#), and Security Forces submits the order to NCIC. See [Section 29B](#).

4.15.11. Orders Issued in Conjunction with Civilian Protective Orders. A commander may issue a “no-contact” order or MPO in conjunction with a protective order issued by civilian authorities. In determining whether issuance of a “no contact” order or MPO is appropriate, commanders should review the terms and length of any civilian protective order (e.g., prohibition against being within 500 feet of a person or prohibition against carrying a firearm vice merely preventing communication). This will help commanders determine which type of order is appropriate and prevent issuance of an order with terms that are contrary to or less restrictive than that issued by civilian authorities. See also 10 U.S.C. § 1561a, *Civilian orders of protection: force and effect on military installations*. Commanders must also consider that civilian authorities will not enforce a no-contact order or MPO, but will enforce a civilian protective order; therefore, MPOs should be no less restrictive than any civilian protective order. Commanders may issue MPOs with terms that are more restrictive than any civilian protective order.

4.16. Command Review of Military Protective Orders.

4.16.1. Subject Requests for Review.

4.16.1.1. Members subject to an MPO may request the review of an MPO or any of its terms.

4.16.1.2. Any such request and supporting matters must be submitted in writing.

4.16.1.3. The commander may elect to allow the member to further present matters in person, telephonically, or in writing.

4.16.1.4. Upon receipt of such requests, the commander must provide a copy of the request to the party protected by the MPO and allow that party three calendar days to provide any matters in response. The commander must consider the response of the protected party in making a determination as to whether to modify or rescind the MPO or any of its terms.

4.16.1.5. Any decision must be communicated to the member and protected party in writing. If the commander modifies or rescinds the MPO, it must be formalized on DD Form 2873-1. **(T-0).**

4.16.1.6. The determination of the commander is final. Members may request additional review of the MPO if the circumstances underlying the MPO or previous request for review have materially changed.

4.16.2. Victim Request for Review.

4.16.2.1. Parties protected by an MPO may request the review of an MPO or any of its terms.

4.16.2.2. Any such request and supporting matters must be submitted in writing.

4.16.2.3. The commander may elect to allow the protected party to further present matters in person, telephonically, or in writing.

4.16.2.4. Any decision must be communicated to the member and protected party in writing. If the commander modifies or rescinds the MPO, it must be formalized on DD Form 2873-1. **(T-0).**

4.16.2.5. The determination of the commander is final. However, protected parties may request additional review of the MPO if the circumstances underlying the MPO or previous request for review have materially changed.

4.16.3. Annual Review Requirement. Commanders must review existing MPOs on at least an annual basis. This obligation is not delegable. This review should be documented in writing, though no format is prescribed.

4.16.3.1. Review as the Result of the Movement of a Member. In the event a member subject to an MPO moves to a new duty station on either an extended TDY, deployment, or PCS, the losing commander must notify the losing BDOC and the gaining commander of the existence of the MPO within 30 days prior to the member's arrival at the new unit. This ensures sufficient safeguards for the member and the protected party are put into place prior to the member's arrival and that the gaining commander is put on notice of the requirement to review the MPO. The gaining commander must review the MPO within seven days of the member's arrival to assess whether the MPO and its terms continue to be valid. If the gaining commander determines that the MPO continues to be valid, the gaining commander must notify the protected parties and BDOC within that initial seven day period. **(T-0).** This obligation is not delegable.

4.16.3.2. Review as the Result of Change of Command. In the event the issuing commander (or subsequent commander who determined the MPO continued to be necessary) changes command, retires, separates, or otherwise ceases to be the commander of the unit to which the individual is assigned, the outgoing commander must notify the incoming commander of the existence of the MPO within 30 days after the change of command. This ensures sufficient safeguards for the member and the protected party remain in place and that the new commander is put on notice of their requirement to review the MPO. The new commander must review the MPO within 30 days of the commander's arrival to assess whether the MPO and its terms continue to be valid. This obligation is not delegable.

4.16.4. Review Process.

4.16.4.1. In order to maintain the MPO and its terms, the commander must determine that the MPO continues to be the least restrictive means necessary to safeguard the protected party from the subject of the MPO.

4.16.4.2. The commander may review the MPO at any time without notifying the subject or victim. However, prior to modifying or rescinding an MPO, the commander (or the commander's designee) must make reasonable attempts to notify the protected party to ensure the opportunity to provide matters for consideration by the commander. The commander (or the commander's designee) should document all attempts to reach the protected party. The commander must consider the response of the protected party in making a determination as to whether to modify or rescind the MPO or any of its terms.

4.16.4.3. After reviewing the MPO and any matters provided by the protected party, the commander makes a determination as to whether to retain the MPO. If the MPO is retained in its entirety, the commander must annotate his review in writing. It is recommended that any such documentation be retained with the MPO. If the MPO is rescinded or modified, any such rescission or modification must be documented on DD Form 2873-1 and a copy must be served on all parties and provided to BDOC. **(T-0).**

4.17. Military Protective Orders and Unrestricted Sexual Assault Reports. In cases involving an unrestricted report of a sexual assault, the commander ensures the issuance of any military protective order complies with DoDI 6495.02. **(T-0).** If a victim requests a military protective order, be it an informal no-contact order or a formal MPO, and the commander elects to deny the victim's request, the commander documents in writing the basis for denial and forwards the request and basis for denial to the installation commander or equivalent.

4.18. Military Protective Orders and Unrestricted Domestic Violence Reports. In cases involving an unrestricted report of a domestic violence, the commander acts in accordance with this paragraph. If a victim requests a military protective order, be it an informal no-contact order or a formal MPO, and the commander elects to deny the victim's request, the commander must document in writing the basis for denial and forward the request and basis for denial to the installation commander or equivalent.

Section 4D—Legal Office Periodic Notification to Victims

4.19. Monthly Notice Required. Victims must be notified, no less than monthly, of the status of the investigation, prosecution, or alternate disposition of the allegation reported to law enforcement or the command, whichever is applicable. Written notification or memorialization is required in accordance with DAFI 51-207. This notification is required regardless of whether a victim is represented by counsel. See DAFI 51-207 for guidance on contacting represented victims.

Section 4E—Administrative Holds

4.20. Administrative Holds. Placing an "administrative hold" on an accused pursuant to DAFI 36-2110, *Total Force Assignments*, and AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, is generally advisable and, in most cases, necessary to avoid risk of PCS or separation of an accused during the pendency of an investigation or judicial proceedings.

4.21. Accused Members Assigned to CONUS. Accused members assigned CONUS will normally be subject to administrative hold and remain in the same assignment throughout investigation and any judicial proceedings. However, administrative holds of an accused can pose additional challenges at overseas stations or other locations with frequent personnel turnover. Practitioners may exercise discretion in determining whether initiating an administrative hold or terminating an existing administrative hold is in the best interest of the DAF.

4.21.1. Practitioners should consider the following non-exhaustive list of factors: the anticipated length of investigation or proceedings, the accused's DEROS, whether the offenses were allegedly committed at the currently assigned station, whether the accused's tour is accompanied or unaccompanied, location of accused's dependents and support network, the health and safety of the accused, availability of services in the community or host nation, current and anticipated locations of DoD and non-DoD witnesses, availability of service of process and court compulsion, U.S. or host nation restrictions on travel, substantial recurring difficulty in coordinating across geographic boundaries or time zones, and other practical obstacles to holding a trial at or near the accused's current duty station.

4.21.2. If an investigation is open, coordination with the military law enforcement office or other investigating offices is strongly recommended.

4.22. PCS of Accused Members. For accused members under law enforcement investigation, with pending charges preferred against them, or for whom a commander is contemplating charges, MAJCOM or FLDCOM SJAs may direct PCS of the accused when in the best interest of the DAF. See DAFI 36-2110, paragraph A17.2.6. Legal offices at each level of the chain of command should coordinate with their counterparts in the intended gaining commands prior to directing PCS.

Section 4F—Proof Analyses, Sensitive Case Information, and Lessons Learned

4.23. Proof Analyses. The first draft of a proof analysis should normally be completed within 30 days of the activation of CIP or SVIP. In cases resulting from command initiated investigations or inquiries, a proof analysis should be complete as soon as possible after the legal office is made aware the commander is exploring the option of preferring charges. For all investigations, investigators and trial counsel, or command and trial counsel, should review and update the initial proof analysis crafted by trial counsel to address the elements, evidence, anticipated objections, and potential defenses for each specification as appropriate, but at least on a monthly basis. Judge advocates may generally discuss the analysis with the case agent, investigator, or command as a means of guiding investigative steps, but should not provide investigators or command with copies of the proof analysis. A proof analysis is typically attorney work-product material; provision of the proof analysis to investigators or command may result in legal challenge to the work product privilege. Proof analyses should be continuously revised during the investigative and pre-trial processes, which will assist counsel in both investigative and pre-trial preparation efforts. Counsel should continue to update and modify the proof analysis as they prepare the case for trial.

4.23.1. In accordance with AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*, the SJA initiates the coordination process as early as possible for cases falling under MEJA.

4.24. Disclosure and Reporting of Sensitive Case Information. As a case develops, both the SJA and law enforcement are required to provide case information and status updates to higher

commands through their respective reporting channels. If the detachment commander, special agent in charge, or security forces commander determines that a case involves sensitive investigative information, to avoid compromising an ongoing investigation, the SJA will not allow disclosure of such information without the concurrence of the detachment commander, special agent in charge, or security forces commander. Some examples of sensitive investigative information could include certain investigative techniques, case leads, and confidential source information. After service of charges, the rules of discovery will control the release of any sensitive investigative information. In addition, portions of the ROI that are in draft form should not be released outside legal office channels without detachment concurrence.

4.25. Lessons Learned. Within 30 calendar days of the conclusion of trial, the legal office trying the case and the investigative office responsible for the investigation of the case should conduct a “hot wash.” The hot wash should include the SJA or DSJA, chief of military justice, and trial team from the legal office (to include applicable VWAP personnel), as well as the AFOSI detachment commander/SFS commander, lead investigator and other case agent(s) or investigators. Other legal office and investigative personnel may attend. Lessons learned may be captured in an after-action report, but an after-action report is not required.

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Chapter 5

MILITARY MAGISTRATE PROGRAM

5.1. Military Magistrates Not Authorized. SecAF has not authorized the utilization of military magistrates. See Article 26a.

Chapter 6

OBTAINING EVIDENCE IN SUPPORT OF CRIMINAL INVESTIGATIONS

Section 6A—Overview of Authorities for Search and Seizure

6.1. Authorization for Search and Seizure. Military judges and qualified commanders have the authority to grant search authorizations based upon probable cause for personnel and locations within the military span of control in accordance with M.R.E. 315(d)(1). This authority is not delegable.

6.1.1. **Order of Preference.** When attempting to obtain a search authorization, legal offices must first attempt to identify a qualifying commander before seeking authorization from a military judge. This reduces the chance that the military judge will be conflicted out of being detailed to subsequent proceedings related to the search authorization.

6.1.2. **Obtaining Search Authorization from a Military Judge.** Government counsel may request a search authorization from a military judge in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

6.1.3. **Forms.** Air Force Form 1176, *Authority to Search and Seize*, is used to document authorization for a search of a person, location, or property and seizure of property pursuant to M.R.E. 315(d). When required by circumstances, verbal authorization may be given but should be followed by written documentation.

Section 6B—Search Authorizations (M.R.E. 315)

6.2. Search Authority. A commander is only qualified to grant a search authorization if the commander has control over the place where the property or person to be searched is situated or found, or, if the place is not under military control, if the commander has control over persons subject to military law or law of war. See M.R.E. 315.

6.2.1. **Legal Determinations.** SJAs and government counsel advising on the decision as to whether to request a search authorization from a military judge or commander must carefully review the facts in each instance to determine whether an impartial commander is qualified to grant a search authorization without conflicting that commander out of other parts of the courts-martial process (e.g., preferral, referral, etc.). SJAs and government counsel must also determine whether a commander is qualified to act as a search authority each time a request arises (e.g., whether the commander has control over the place where the person or property to be searched is situated or found, or over the person to be apprehended).

6.2.2. **Requirement for Neutral and Detached Commander Acting as Search Authority.** A commander issuing a search authorization must be neutral and detached. This excludes commanders who exhibit bias or appear to be predisposed to one outcome or another. However, the participation of a commander in investigative activities in furtherance of command activities does not per se disqualify that commander from authorizing a search under M.R.E. 315. See *United States v. Huntzinger*, 69 M.J. 1 (CAAF 2010); *United States v. Freeman*, 42 M.J. 239 (CAAF 1995). Prior to utilizing a commander for granting search authorization, counsel for the government should determine whether the commander's involvement may preclude them from preferring or referring charges in the same case. Law

enforcement members shall not exercise authority to grant search authorizations under M.R.E. 315.

6.2.3. Air Force Reserve Command Jurisdiction. Commanders acting as search authority for Air Force Reserve Command installations and personnel must be in a Title 10 status.

6.2.4. Military Installations Not Under Control of the Air Force or Space Force. Qualifying DAF commanders may exercise search authority for matters involving DAF personnel on the installation. Based on probable cause, qualifying commanders may authorize search and seizure (and apprehension) involving DAF personnel at such installations to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. M.R.E. 315(d)(1); R.C.M. 302(e)(2). Commanders may possess concurrent search and seizure authority with non-DAF commanders. Nothing in this paragraph is intended to negate or diminish the authority of a non-DAF commander, military judge, or magistrate to authorize searches consistent with M.R.E. 315.

6.2.5. Pentagon Reservation. AFDW/CC is a GCMCA and may authorize searches involving DAF controlled or occupied spaces of the Pentagon Reservation or DAF personnel located, assigned or attached therein, pursuant to M.R.E. 315(d)(1). Additionally, any other DAF commander located in the Pentagon may authorize searches over people or places under that specific commander's control. Generally, authorized searches within the Pentagon Reservation are coordinated with Washington Headquarters Services and the Pentagon Force Protection Agency prior to execution. The failure to coordinate with the Washington Headquarters Services and Pentagon Force Protection Agency does not create any right or benefit for any DAF member.

6.2.6. Tenant Units. A tenant unit commander may exercise search authority for matters involving DAF personnel to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. Depending on the place to be searched, other commanders on the installation may be the more appropriate choice to exercise search authority.

6.2.7. Searches of Locations or Property Under the Control of Military Counsel. If a location or property that is to be inspected or searched is under the control of a military DC or VC, precautions should be taken to protect client confidentiality, privileged communications, and attorney work product to the maximum extent possible. Such a search should be pursued only when there is no other feasible alternative.

6.2.7.1. The base-level SJA informs the Director, JAJ, before such a search is executed pursuant to authorization under M.R.E. 315(d) or as soon as possible if exigent circumstances exist pursuant to M.R.E. 315(g).

6.2.7.2. The purpose of this notification is to provide information, not to seek assistance in obtaining or authorizing a search of defense counsel or VC property. If a search is authorized, it should be conducted so as to minimize disruption to the operation of the office of the defense counsel or VC and should occur at a time when clients are unlikely to be present. It is further recommended that additional precautions, such as having an investigator and judge advocate unaffiliated with the installation conduct the search, ordering the searchers not to disclose the matters o, and have a military judge review papers

seized to determine what matters are responsive to the search authorization and how to handle other seized material. See *United States v. Calhoun*, 49 M.J. 485 (CAAF 1998).

Section 6C—United States Mail and Government Information Systems

6.3. United States Mail. For the inspection, search, and/or seizure of mail in the custody of the military postal service OCONUS, a convening authority authorized under Article 23(a) may issue a search authorization for the particular person or location involved. See DoD 4525.6-M, *Department of Defense Postal Manual*, for procedures. For the inspection, search, and/or seizure of mail in the United States, a warrant or other court order issued by a federal civilian magistrate or civilian judge is generally required. See *United States Postal Service Administrative Support Manual*, Part 274.

6.4. Government Information Systems. Government information systems are subject to monitoring, interception, search, and seizure for all authorized purposes in accordance with the DoD Consent Banner placed on government information systems.

6.4.1. The DoD Consent Banner does not extend to the content of privileged communications or work product related to personal representation or services by attorneys, psychotherapists, or clergy, to include their assistants. Users should annotate their privileged communications in e-mails and documents to ensure such information is kept confidential and not inappropriately accessed or read during authorized search, seizure, interception, or monitoring activities. Failure to annotate that a communication is privileged does not, per se, waive the privilege. Investigators should consult with the appropriate legal office or OSI/JA prior to and during such activities to ensure privileged communications are appropriately protected and remain confidential.

6.4.2. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. See M.R.E. 314(d). However, if the totality of the facts and circumstances indicate that the subject has a reasonable expectation of privacy, usually because the government property was issued for exclusive personal use, obtaining a search authorization is warranted.

Section 6D—Investigative Subpoenas

6.5. Overview. Investigative subpoenas may be issued at any point during the investigative or court-martial process (e.g., at any point after an allegation is received and prior to completion of final review). Investigative subpoenas may be issued either by counsel for the government (when authorized by the GCMCA) or by a military judge pre-referral, and may be issued by trial counsel post-referral. See R.C.M. 703. Investigative subpoenas may be issued for production of evidence, unless otherwise limited by law.

6.5.1. Limitations of Investigative Subpoenas.

6.5.1.1. Pre-referral investigative subpoenas may not be used for witness testimony.

6.5.1.2. Pre-referral investigative subpoenas may not be used to obtain content or non-content wire or electronic communications. **(T-0)**. See R.C.M. 309(b); R.C.M. 703A. However, this does not limit the ability of government counsel (if authorized by the

GCMCA) or a military judge from issuing an investigative subpoena for basic subscriber information.

6.5.2. Trial Counsel Investigative Subpoenas.

6.5.2.1. Pre-Referral Investigative Subpoenas. Prior to issuing a pre-referral investigative subpoena, government counsel must request authorization to issue each pre-referral investigative subpoena from the GCMCA. See R.C.M. 703(g)(3)(D)(v). The convening authority's authorization is limited to specific subpoenas. Blanket authorization to issue subpoenas is not authorized (e.g., convening authority may not permit government counsel to issue "all the subpoenas necessary in the case of United States v. Amn Snuffy" but may permit government counsel to issue "a subpoena for bar receipts of Amn Snuffy and SSgt Doe to Bar X"). Authorization by the convening authority to government counsel must be in writing. A template can be found on the VMJD.

6.5.2.2. Post-Referral Subpoenas. Government counsel may issue post-referral subpoenas in accordance with R.C.M. 703(g)(3)(D). There is no requirement to obtain convening authority approval to issue any such subpoena.

6.5.3. **Convening Authority Authorization to Issue Investigative Subpoenas.** Convening authorities do not have the independent authority to issue investigative subpoenas. Investigative subpoenas may only be issued by government counsel. See R.C.M. 703(g).

6.5.4. **GCMCA Delegation of Authorization to Issue Investigative Subpoenas.** The GCMCA may delegate the authority to approve pre-referral investigative subpoenas to subordinate SPCMCAs, but such delegation must be in writing. A template for this delegation can be found on the VMJD.

6.5.5. **Military Judge Investigative Subpoenas.** Military judges may issue investigative subpoenas pre-referral, but do not issue investigative subpoena post-referral.

6.5.5.1. Upon application by government counsel, a military judge may issue a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C). See R.C.M. 309(b)(1); Articles 30a and 46, UCMJ.

6.5.5.2. Defense counsel may request that government counsel make an application for a pre-referral investigative subpoena. See R.C.M. 309(b) Discussion. Government counsel must submit the defense application to the military judge, and the military judge has discretion to grant defense counsel an opportunity to be heard. **(T-0).**

6.5.6. **Victim Notification.** Subpoenas for personal or confidential information about a victim named in a specification require the victim be given notice in accordance with R.C.M. 703(g)(3)(C)(ii) so that said victim has the opportunity to move for appropriate relief, unless exceptional circumstances exist. This notification is required regardless of whether the subpoena is issued by a military judge or by government counsel (when authorized by a GCMCA or delegee).

6.5.7. **Required Format.** Investigative subpoenas are issued on DD Form 453, *Subpoena*. **(T-0).** It is the responsibility of government counsel to ensure the subpoena is served on the party subject to the subpoena or their agent.

6.5.7.1. In the absence of specific direction from a military judge, government counsel should ordinarily be listed on DD Form 453 as the individual to whom requests for relief should be directed.

6.5.7.2. While neither government counsel nor the convening authority have statutory ability to grant relief, government counsel is responsible for forwarding requests for relief to the detailed military judge or JAT to request a military judge be detailed to address any such requests.

Section 6E—Stored Communications Act Data (R.C.M. 309 and 703A; Article 30(a), UCMJ)

6.6. General Provision. A detailed military judge, upon application by government counsel in connection with an ongoing investigation of an offense under the UCMJ, may issue a warrant to a qualifying provider of electronic communications service or remote computing service for the disclosure of the contents of wire or electronic communications, both pre-referral (including pre-referral) and post-referral. See R.C.M. 703A. In addition, a military judge may issue a warrant or order for disclosure of non-content data and information pertaining to subscribers or customers of those services. See R.C.M. 703A; Articles 26 and 30a, UCMJ; *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). See also 18 U.S.C. § 2701, et seq. This does not limit the ability of government counsel (if authorized by the GCMCA) or a military judge from issuing an investigative subpoena for basic subscriber information. Templates can be found on Knowledge Management under the Government Trial Counsel section.

6.6.1. Preservation Requests. Upon learning of the existence of evidence maintained by a provider of wire or electronic communication services or remote computing services, government counsel should coordinate with law enforcement to request that the provider preserve the pertinent records. A preservation request requires retention of records for 90 days and may be renewed once, for a maximum preservation period of 180 days. Preservation requests are not prospective; requests apply only to data already in existence, not data created after the preservation request. See R.C.M. 703A(f).

6.6.2. Warrants Required for Content Data. Judicial orders may not be used to compel a provider of electronic communication service to disclose the content of any wire or electronic communication that is in electronic storage in an electronic communication system. In accordance with *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), warrants are required for disclosure of the content of any wire or electronic communication in electronic storage in an electronic communications system, regardless of the length of time the content is maintained. Military judges may only issue warrants upon probable cause for such disclosures.

6.6.3. Providers of Services to the Public. Practitioners who intend to apply for a warrant or order for wire or electronic communications should first identify whether the entity that possesses the content is a public electronic communications or remote computing service. See 18 U.S.C. § 2711, *Definitions for chapter*.

6.6.4. Location of Data Storage. To the extent possible, practitioners, in coordination with applicable law enforcement, should also identify the location of the server in which the communications are stored in order to determine whether there is an executive agreement in place that would allow the execution of the warrant or order. See 18 U.S.C. § 2522.

Enforcement of the Communications Assistance for Law Enforcement Act and 18 U.S.C. § 2523, Executive agreements on access to data by foreign governments.

6.6.5. Request for Military Judge. Government counsel is responsible for requesting a military judge be detailed and for submitting the application for a warrant or order to the military judge, regardless of the author of the affidavit. **(T-0).**

6.6.6. Real Time Interception Not Affected. Neither this section nor R.C.M. 309 or 703A, or Article 30(a), apply to “real-time” interception of wire, electronic and oral communications in accordance with DoDI 5505.09, *Interception of Wire, Electronic and Oral Communications for Law Enforcement* and 18 U.S.C. § 2511, *Definitions for chapter*.

6.7. Warrants for Stored Communications Act Data.

6.7.1. General Provision. A warrant is a writ, supported by probable cause, issued by a military judge directing an electronic communications service or remote computing service to provide the content of stored electronic or wire communications (e.g., the body of text messages and emails, cell-site location information, etc.). Such warrants may be applied for and issued by a military judge both pre-referral (including pre-preferral) and post-referral. See R.C.M. 703A. Content data, regardless of the length of time it is stored, must be obtained with a warrant. A court order, as discussed in [paragraph 6.8](#), is not sufficient. See *U.S. v. Warshak*, 631 F.3d 266 (6th Cir. 2010); 18 U.S.C. § 2703(b)(1)(A), *Required disclosure of customer communications of records*; R.C.M. 703A(b).

6.7.2. Warrant Request. To obtain a warrant, government counsel must submit a request in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial. The requesting party (government counsel or federal law enforcement) must prepare a warrant application and draft warrant. Government counsel must submit the application, draft warrant, and supporting evidence, which may include sworn witness testimony, to the military judge.

6.7.3. Request for Non-Disclosure Order. If government counsel asserts that a non-disclosure order is necessary, government counsel indicate such on the warrant application and submit, in writing, the reasons for the request. Government counsel must also prepare a draft non-disclosure order. See [paragraph 6.9](#); 18 U.S.C. § 2705(b).

6.7.4. Issuance by Military Judge. If the military judge determines there is probable cause to believe the information sought contains evidence of a crime, the military judge will issue the warrant to the requesting federal law enforcement officer or government counsel. **(T-0).** See 18 U.S.C. § 2703(b)(1)(A); R.C.M. 703A(b). If a request for a non-disclosure order is submitted with the warrant application, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing. **(T-0).**

6.7.5. Forms. Warrant applications are accomplished via DD Form 3057, *Application for Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703* and DD Form 3056, *Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703*.

6.8. Court Order for Stored Communications Act Data.

6.8.1. General Provision. An order, supported by reasonable grounds to believe that the records or information sought are relevant and material to an ongoing criminal investigation, may be issued to an electronic communications service or remote computing service for data

other than content (e.g., name, telephone number, address, length of service, services utilized, payment data, etc.). Consult current case law to determine whether an order is sufficient to obtain the data sought.

6.8.2. Order Request. To obtain an order, trial counsel must submit a request in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial. The requesting party (government counsel or federal law enforcement) must prepare an order application. Government counsel must submit the application and supporting evidence, which may include sworn testimony, to the military judge. The federal law enforcement agent or government counsel completing the order application should annotate whether delayed notification to the subscriber is requested. See 18 U.S.C. § 2705(b). The party seeking the order must notify the subscriber of the application for the order unless the party requests the military judge grant delayed notification. **(T-0)**. The federal law enforcement agent or government counsel completing the order application must prepare a draft disclosure order and any draft delayed notification orders in writing for the military judge. If granted, the disclosure order and any delayed notification orders must be in writing.

6.9. Non-Disclosure Order to Electronic Communications Service or Remote Computing Service. In accordance with 18 U.S.C. § 2703(b)(1)(A), 18 U.S.C. § 2705(b) and R.C.M. 703A(d)(2), government counsel may request the military judge order the electronic communications or remote computing service not to disclose the existence of a warrant or order to any third party, including the subscriber. See also *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). The non-disclosure order must be issued by the military judge consistent with R.C.M. 703A. **(T-0)**. If a request for a non-disclosure order is submitted, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing for provision to the electronic communications service or remote computing service, whichever is applicable.

6.10. Ex Parte or In Camera Nature of the Proceeding. Proceedings related to requests for investigative subpoenas and warrants/orders for wire or electronic communications will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. The record of proceedings will consist of all documents considered or issued by the detailed judge in acting upon such requests. The military judge has discretion as to whether to hold a hearing in relation to requests for investigative subpoenas and warrants/orders for wire or electronic communications.

6.11. Contempt for Failure to Comply. Failure of an electronic communications service or remote computing service provider to comply with a warrant or court order subjects the service provider to being held in contempt. See Article 48, UCMJ, and [Section 19J](#).

6.12. Defense Requests for Warrants or Orders for Wire or Electronic Communications. Defense counsel may request that government counsel make an application for a warrant or order both before and after referral. See R.C.M. 703(g)(3)(D) and 703A(a). Government counsel must submit the defense application to the military judge, and the military judge has discretion to grant defense counsel an opportunity to be heard. Government counsel should also consult with the investigating agency to determine the appropriateness of sending a preservation request at that time.

6.13. Requests for Relief from Subpoena or Other Process. Individuals in receipt of investigative subpoenas or service providers in receipt of a court order to disclose information regarding wire or electronic communications may request relief on the grounds that compliance is

unreasonable, oppressive or prohibited by law. The military judge will then make a determination as to whether the party must comply or will modify or quash the subpoena or order. See R.C.M. 703A(c)(2).

6.14. Post-Referral Requests for Warrants or Orders. An Article 30a, UCMJ, proceeding is only required pre-referral. Requests for court orders or search warrants post-referral may require an Article 39(a), UCMJ.

Section 6F—Immunity (R.C.M. 704, M.R.E. 301(d)).

6.15. Grants of Immunity.

6.15.1. General Provision. A GCMCA possesses the authority to grant immunity to witnesses. The GCMCA may delegate the authority to grant immunity to subordinate SPCMCA. Any such delegation must be in writing, and the authorization may not be further delegated. **(T-0)**. If the GCMCA delegates authority to grant immunity to the SPCMCA, the SPCMCA SJA must consult with the GCMCA SJA before requesting a grant of immunity from the SPCMCA. All grants of immunity must be in writing and attached to the record of trial (ROT). When another GCMCA retains administrative control over the witness to be immunized, prior coordination with the retaining GCMCA or delegee, if applicable, is recommended. Grants of immunity should include language stating the immunity grant takes effect on the date the witness receives a copy of it. Sample grants of immunity and order to testify are available on the VMJD.

6.15.2. National Security Cases. Process immunity requests for witnesses suspected of criminal activity involving national security according to [paragraph 6.15.4](#), regardless of whether the witness is subject to the UCMJ. JAJG is responsible for coordinating such cases with the Department of Justice and other interested United States agencies.

6.15.3. Cases Involving the Department of Justice. If the Department of Justice has an interest in investigating and prosecuting a witness suspected of criminal activity, prepare the immunity request, regardless of whether the witness is subject to the UCMJ. **(T-0)**. The GCMCA or delegee, if applicable, must indicate the intent to approve a request for immunity to the Department of Justice. A written memorandum from the GCMCA or delegee is then forwarded to JAJG, who will staff the package to the Department of Justice. The Department of Justice (or other authority designated under 18 U.S.C. § 6004) will then either authorize the GCMCA to offer immunity or will disapprove the request. If authorized, the GCMCA may then offer the person immunity. Prepare requests for Department of Justice authorization in accordance with [paragraph 6.15.4](#).

6.15.4. Requests for Department of Justice Authorization.

6.15.4.1. In cases requiring Department of Justice authorization, the SJA whose office is prosecuting the court-martial initiates the request for Department of Justice authorization. When the GCMCA, or delegee, indicates in a memorandum the intent to grant immunity, the GCMCA SJA or SPCMCA SJA, if the authority to grant immunity has been delegated to the SPCMCA, forwards the request with written endorsement, by e-mail, directly to JAJG, with information copies to the MAJCOM SJA. The SJA should consult with JAJG prior to forwarding the request as the Department of Justice requires requests be forwarded in a specific format. Requests are forwarded no less than 30 days in advance of the date

the witness is expected to testify. SJAs should consider requesting a delay pursuant to R.C.M. 707(c)(1) while authorization is pending.

6.15.4.2. The written request should include the following information:

6.15.4.2.1. Case name and nature of the proceeding for which requesting immunity;

6.15.4.2.2. Nature of the charges against the accused and anticipated date of the proceeding;

6.15.4.2.3. Name, social security number (SSN), date and place of birth, and address of the witness;

6.15.4.2.4. The witness's military status and organization, if any;

6.15.4.2.5. Whether the defense or prosecution requested the immunity;

6.15.4.2.6. Name, grade, organization, and mailing address of the GCMCA or delegee who will grant the immunity after receiving Department of Justice authorization, and a statement that the GCMCA or delegee supports the immunity request. **Note:** Immunity is not actually granted until approved by the GCMCA or delegee after receiving Department of Justice authorization;

6.15.4.2.7. An explanation of why immunity is necessary, including whether any state or federal charges are pending against the witness and a description of those charges, if any;

6.15.4.2.8. Whether the witness is currently incarcerated and, if so, the location, cause, and length of incarceration;

6.15.4.2.9. A summary of the witness's expected testimony;

6.15.4.2.10. Factual basis for believing the witness will assert the privilege against self-incrimination, including the nature of the offenses in which the witness may be incriminated;

6.15.4.2.11. The likelihood of the witness testifying, should immunity be granted; and

6.15.4.2.12. Name, title, address and telephone number of the representative from the local State's Attorney's Office and United States Attorney's Office with whom trial counsel coordinated the request. Include information on whether the representative supports or opposes the request.

6.15.5. Preliminary Discussions of Immunity. Judge advocates and investigators are to be exceedingly careful in discussing the possibility of immunity with anyone involved in an investigation or potential prosecution. Avoid creating a perceived expectation of immunity that may be unfounded. The best practice is to first coordinate potential grants of immunity with the appropriate convening authority, and when appropriate, JAJG.

Chapter 7

PRE-REFERRAL JUDICIAL PROCEEDINGS (ARTICLE 30A, UCMJ; R.C.M. 309)

7.1. General Provision. A pre-referral proceeding may occur at any point prior to referral, to include pre-preferred.

7.2. Detailing of Military Judges for Pre-Referral Proceedings. Military judges are requested and detailed to the pre-referral proceedings described in this chapter in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

7.3. Covered Matters. See Article 30a, UCMJ, and R.C.M. 309 for matters which may be addressed in pre-referral judicial proceedings. Additional requirements are discussed in this chapter.

7.4. Pre-Referral Investigative Subpoenas. If issuance of an investigative subpoena is requested from a military judge pre-referral, the military judge determines whether or not a hearing is required. See [Section 6D](#) for further information and procedures. Proceedings will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. See Uniform Rules of Practice Before Department of The Air Force Courts-Martial.

7.5. Pre-Referral Warrants or Orders for Stored Communications Act Data. If issuance of a warrant or order is from a military judge requested pre-referral, the military judge determines whether or not a hearing is required. See [Section 6E](#) for further information and procedures. Proceedings will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. See Uniform Rules of Practice Before Department of The Air Force Courts-Martial.

7.6. Requests for Relief from Subpoena or Other Process. Prior to referral, only the entities listed in R.C.M. 309(b)(3) may request relief from subpoenas or other judicial process.

7.7. Recording of Pre-Referral Proceedings. All hearings conducted pursuant to Article 30a, UCMJ, must be recorded verbatim and transcribed. For recording purposes, follow the procedures in [paragraph 12.8](#) used for recording an Article 32, UCMJ, preliminary hearing. See DAFMAN 51-203 for guidance on preparation of the record of proceedings required in R.C.M. 309. The trial counsel must ensure that the record of proceedings is maintained on behalf of or by the appropriate convening authority or commander, and such record will be included in the ROT if applicable.

Chapter 8

PROVISION OF INFORMATION TO DEFENSE AND VICTIMS' COUNSEL

Section 8A—Provision of Information to Defense Counsel

8.1. Release of Information to Defense Counsel. SJAs and government counsel are strongly encouraged to provide matters to defense counsel as soon as practicable. This may be prior to preferral of charges. At preferral, government counsel must, at a minimum, provide defense counsel copies of the matters listed in R.C.M. 404A(a)(1). **(T-0).** If it is impractical to provide these matters, government counsel must permit the defense to inspect them. The provisions in this section are not intended to create any additional substantive right to discovery, which is described in the MCM. After referral of charges to trial, both trial and defense counsel conduct discovery in accordance with R.C.M. 701 and 703.

8.2. Distinction Between Discovery and Freedom of Information Act (FOIA)/Privacy Act Release. When stating that certain documents are protected from release, or that certain discoverable documents should be redacted before being provided to defense counsel, government counsel should distinguish between rules pertaining to discovery and rules pertaining to the release of information to a third party (such as FOIA or Privacy Act). Trial counsel should maintain an unredacted copy of any redacted items provided to defense in the event unredacted items must later be provided to defense.

8.2.1. Releasing Privacy Act Material to Defense Counsel. When releasing Privacy Act material to defense counsel, government counsel should redact non-discoverable Privacy Act information regarding individuals other than the accused. An example of this is SSNs of individuals providing urinalysis samples, which are listed in an otherwise discoverable document, but which have no relevance to the case. When Privacy Act material is not redacted in discovery material, defense counsel must take appropriate steps to guard against improper release of this information. Additionally, if government counsel elect not to redact Privacy Act material when providing discovery to civilian defense counsel, government counsel should obtain a signed statement from the civilian defense counsel stating the defense counsel agrees not to release Privacy Act information to others not involved with the defense of the case, using the format set forth at the VMJD.

8.3. Coordination for Review and Analysis of Child Pornography Evidence. When there is evidence of child pornography, refer to 34 U.S.C. § 20911 et seq., *Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators*, commonly known as “The Adam Walsh Act,” and 18 U.S.C. § 3509, *Child victims’ and child witnesses’ rights*, with regard to discovery. Review and analysis of all evidence of child pornography must be coordinated with the OSI detachment investigating the case. **Note:** Responsibility for handling of child pornography differs based on the status of the child pornography. See [Section 16C](#).

Section 8B—Provision of Information to Victims’ Counsel

8.4. Release of Records to VCs. Requests from DAF VCs and VCs from other services for records pertaining to a court-martial proceeding involving their clients are properly addressed as “official use” requests under the Privacy Act and FOIA. See 5 U.S.C. § 552a(b)(1); DoD 5400.11-

R, *Department of Defense Privacy Program*, paragraph C4.2.1. Victims may also hire civilian attorneys to serve as VC. In such cases, a civilian VC may request information pursuant to the “routine use” provision of the SORN “Military Justice and Civilian Criminal Case Records,” DoD 0006, consistent with law and policy as to victims’ rights and access to information.

8.5. SJA Release of Information.

8.5.1. An SJA’s decision to release information is limited in scope to information generated and maintained by the servicing legal office in accordance with law and policy. See also F051 AFJA I, Military Justice and Magistrate Court Records.

8.5.2. An SJA’s decision to release information pursuant to an official request or routine use request is discretionary, unless the SJA is otherwise required by law or policy to provide that information to the victim or victim’s counsel. See MCM; DAFI 51-207.

8.5.3. Pursuant to an official or routine use request, SJAs have discretion to release records that are minimally required to accomplish the VC’s intended use as articulated in the request. See DoD 5400.11-R, paragraph C4.2.1. Such records may include but are not limited to the following items:

8.5.3.1. Copies of the VC’s client’s statements and documents provided by the client.

8.5.3.2. Copies of or access to statements by the accused or another witness implicating an Article 6b, UCMJ right or privilege of VC’s client. For example, evidence that could potentially be covered under M.R.E. 412 or a privilege.

8.5.3.3. Copies of or access to any evidence or information that could suggest a safety concern to the VC’s client. Any victim or witness should immediately be informed of any information that suggests a safety concern for that victim or witness.

8.5.3.4. Copies of any evidence directly relating to or derived from the VC’s client. For example, photos, medical records, or communications by the VC’s client.

8.5.3.5. Copies of or access to evidence or information that could indicate retaliation against or ostracism towards the VC’s client.

8.5.3.6. Copies of or access to evidence directly relating to an alleged offense against the VC’s client.

8.5.4. Releasing Privacy Act Material to VC. Government counsel should redact Privacy Act information regarding individuals other than the attorney’s client. An example is SSNs of other victims, which have no relevance to the case. When Privacy Act material is not redacted in official use material, VCs should take appropriate steps to guard against improper release of this information. SJAs should consider obtaining agreement from civilian counsel that they will return the Report of Investigation at the conclusion of the case or post-trial consistent with the admonitions of *Gray v. Mahoney*, 39 M.J. 299 (C.M.A. 1994), or in the alternative merely providing access to the report. Further, SJAs must obtain a signed statement from the civilian victims’ counsel stating counsel agrees not to release any protected information to others not involved with representing the victim. A template is available on the VMJD.

8.5.5. Releasing Privacy Act Material to Victims. When a victim is making the request on their own and is otherwise unrepresented, Government may provide access to requested material as a routine use under the Privacy Act system of records notice for “Military Justice

and Civilian Criminal Case Records,” DoD 0006. If the government chooses to provide copies, third-party personal information must first be redacted. **Note:** Victims should not be given access to or copies of sealed exhibits.

8.5.6. Law Enforcement Records.

8.5.6.1. Draft Documents and Unpublished Reports of Investigations. SJAs may not release unpublished law enforcement ROIs (or portions of ROIs, to include statements and summaries of statements) without prior coordination with the relevant law enforcement agency. SJAs may either forward the request or direct the requester to the commander or equivalent for the law enforcement agency that generated the draft/unpublished report.

8.5.6.2. Published ROIs. SJAs must consult with the commander or equivalent for the law enforcement agency that generated the report before releasing published law enforcement ROIs or portions thereof to any DC or VC. The law enforcement commander or equivalent shall have the opportunity to object or raise any concerns (e.g., tradecraft, privileged matters) prior to the SJA carrying out discovery or disclosure requirements of such material as articulated in the UCMJ, R.C.M., and DoD and DAF policies.

8.5.7. Decisions to release any documents or portion thereof over the objection of the law enforcement commander, or to deny such release, must be memorialized in writing.

8.5.8. The responsibilities in this section are delegable no lower than the DSJA unless otherwise stated herein.

8.6. Victims’ Counsel Responsibilities. All requests must be in writing and sufficiently detailed to allow the SJA to respond to the request. All counsel must take necessary steps to protect information from improper release. See [paragraph 8.5.4](#).

Chapter 9

PRETRIAL CONFINEMENT (R.C.M. 305)

9.1. General Provision. No person may be ordered into pretrial confinement except for probable cause as defined in R.C.M. 305(d). **(T-0).** Normally, offenses intended to be disposed of by a SCM do not warrant pretrial confinement. **Note:** Imposition of pretrial confinement or restraint will trigger the speedy trial clock under R.C.M. 707 and the speedy trial analysis under Article 10, UCMJ.

9.2. Limitation on Confinement Location. Military members may not be placed in confinement in immediate association with enemy prisoners, or foreign nationals detained under the law of war who are not otherwise members of the armed forces. See Article 12, UCMJ. **(T-0).**

9.3. Required Victim Notifications. In cases involving a victim as defined by Article 6b, UCMJ, the SJA must ensure said victim is notified:

9.3.1. Upon the confinee's entering pretrial confinement. **(T-0).**

9.3.2. Upon the confinee's release from pretrial confinement. **(T-0).**

9.3.3. Additionally, the Pretrial Confinement Review Officer (PCRO), through the SJA or government representative, is required to ensure the victim has the opportunity to make a statement either personally or through counsel at the pretrial confinement review hearing. **(T-0).** See R.C.M. 305(i)(2). A template is provided on the VMJD.

9.4. Procedures. Once a member is ordered into pretrial confinement, follow the procedures required in R.C.M. 305, to include providing initial notifications to the accused.

9.5. 48-Hour Probable Cause Determination. Within 48 hours of the imposition of military pretrial confinement (including confinement at a civilian facility at the request of the military), a neutral and detached officer must review the adequacy of probable cause to continue pretrial confinement. **(T-0).** R.C.M. 305(i)(1); *Gerstein v. Pugh*, 420 U.S. 103, 124–25 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44, 45 (1991). The determination must be in writing and included in the ROT. A template is available on the VMJD. If the probable cause determination is not made within 48 hours, the government may have to establish the existence of a bona fide emergency or other extraordinary circumstances.

9.5.1. An officer is neutral and detached if they have not demonstrated personal bias or involvement in the investigative or prosecutorial process against the accused. *United States v. McLeod*, 39 M.J. 278 (C.M.A. 1994). Factors to consider in determining whether an officer is neutral and detached include whether the officer is the formal accuser on the charge sheet, the officer who ordered the accused into confinement, or is directly or particularly involved in the command's law enforcement functions. *United States v. Rexroat*, 38 M.J. 292, 298 (C.M.A. 1993); *United States v. Lynch*, 13 M.J. 394, 397 (C.M.A. 1982).

9.5.2. The PCRO's seven day review in [paragraph 9.7](#) may satisfy the 48-hour probable cause determination requirement if the PCRO's decision memorandum is completed within 48 hours of the imposition of confinement. In such cases, the PCRO's memorandum must specifically state when the probable cause determination was made. **(T-0).** Likewise, the 72-hour commander's decision and memorandum in [paragraph 9.7](#) may satisfy the 48-hour

probable cause requirement if the commander's memorandum is completed within 48 hours of the imposition of confinement.

9.5.3. If a military member is arrested by civilian authorities and subsequently transferred to military custody and placed in military pre-trial confinement, a 48-hour probable cause determination is still required regardless of whether civilian authorities made a probable cause determination. **(T-0)**. If civilian authorities made a probable cause determination, include that in the ROT in addition to the 48-hour determination required under R.C.M. 305(i).

9.6. 72-Hour Commander's Decision and Memorandum. The commander shall decide whether to continue pretrial confinement no later than 72 hours after (a) a military member is ordered into pretrial confinement, or (b) after the commander's receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable. **(T-0)**. The commander must address the requirements for confinement in R.C.M. 305(h)(2)(B) and should consider the factors in the Discussion to that section. When deciding to continue pretrial confinement, the commander must prepare a written memorandum in accordance with R.C.M. 305(h)(2)(C). The memorandum is then forwarded to the PCRO, through the SJA and SPCMCA. If a court-martial results, the commander's memorandum is included in the ROT. A template is available on the VMJD.

9.7. Pretrial Confinement Review (R.C.M. 305(i)(2)). Within seven calendar days of the member being placed in military pretrial confinement, the PCRO reviews the probable cause determination and makes a decision about the necessity for continued pretrial confinement. The day placed in confinement counts as day one and the date of review counts as one day.

9.7.1. Appointment of a Pretrial Confinement Review Officer (PCRO) (R.C.M. 305(i)(2)). The SPCMCA appoints, in writing, a reasonable number of qualified officers to serve as PCROs. Chaplains, legal office personnel, law enforcement personnel, and court-martial convening authorities may not serve as PCROs. When the situation warrants, a PCRO from another military service may be appointed. Similarly, an otherwise qualified Air Force or Space Force member may serve as a PCRO for another military service. SJAs must ensure PCROs are briefed on their duties when appointed, and updated as appropriate thereafter.

9.7.2. The PCRO reviews the 72-hour commander's decision to continue pretrial confinement and considers any matters submitted by the pretrial confinee.

9.7.3. Hearing. The PCRO conducts a hearing at which the pretrial confinee and defense counsel, if practicable, are allowed to appear and make a statement before the PCRO. The accused does not have a right to have defense counsel appear in person before the PCRO. Defense counsel may represent their client at the hearing via telephone or video teleconference technology as long as there is a mechanism for defense counsel and accused to have private and confidential communication as necessary. A government representative, usually a judge advocate, may also make a statement, if practicable. Although the pretrial confinement review is not an adversarial proceeding, the PCRO may exercise discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence and cross-examine witnesses. The PCRO completes a written summary of the relevant testimony of any witnesses, including information elicited by defense counsel. The only rules of evidence that apply are M.R.E. 302, 305, and 501-514.

9.7.3.1. If custody classification does not dictate a distinctive uniform, a pretrial confinee is allowed to wear a duty uniform for the hearing rather than civilian confinement attire. See AFMAN 31-115, Vol 1, *Air Force Corrections System*.

9.7.3.2. The pretrial confinee, defense counsel, or both may present evidence related to confinement conditions in apparent violation of Articles 12 or 13, UCMJ. If such evidence is presented, the PCRO summarizes the evidence in the PCRO memorandum and informs the SJA. The SJA reviews the evidence pertaining to allegedly illegal confinement conditions and works with the member's commander and the local Security Forces commander or other confinement officials to remedy the situation as necessary.

9.7.4. Upon completion of the PCRO's review, the PCRO approves continued confinement or orders immediate release. The PCRO must find the requirements of R.C.M. 305(h)(2)(B) have been proven by a preponderance of the evidence in order to continue pretrial confinement. **(T-0).** If the requirements of R.C.M. 305(h)(2)(B) have not been proven, the PCRO orders immediate release of the pretrial confinee. The PCRO may not impose conditions on release but may recommend the commander impose a less severe form of pretrial restraint.

9.7.5. The PCRO must convey their pretrial confinement decision within seven days of the imposition of confinement. See R.C.M. 305(h)(2)(C). Within 24 hours of conveying the pretrial confinement decision, the PCRO must complete a memorandum of the PCRO's conclusions and the findings on which they are based. See R.C.M. 305(i)(2)(D). A copy of all documents and summaries of all oral statements considered by the PCRO are attached to the memorandum. The memorandum with attachments is provided to the SPCMCA, the SPCMCA's SJA, the confinement officer, the pretrial confinee, and the pretrial confinee's defense counsel. A sample format for the PCRO's memorandum is listed on the VMJD.

9.8. Pretrial Restraint Upon Release From Confinement. A commander may impose any alternative lesser form of pretrial restraint authorized by R.C.M. 304(a)(1)-(3), if release is ordered by the PCRO. Re-confinement after release is limited to circumstances provided in R.C.M. 305(l). *United States v. Mahoney*, 36 M.J. 679 (A.F.C.M.R. 1992) (dictum). The requirements of this chapter apply to a member upon imposition of re-confinement.

9.9. Suicide Prevention. Preventing an accused from committing suicide is not valid as the sole basis for ordering the accused into or continuing pretrial confinement or pretrial restraint. Such an accused should be referred to mental health practitioners for evaluation and treatment and, if necessary, involuntary commitment in a mental health facility. *United States v. Doane*, 54 M.J. 978, 982 (AFCCA 2001).

9.10. Pretrial Determination of Mental Competence. A convening authority may determine the place and condition of pretrial detention, including confinement in a civilian facility, for the purpose of evaluating the competency of the accused. The conditions may not be more harsh than necessary to ensure the accused's presence at trial, and the facility must be capable of conducting the competency evaluations and providing care and treatment of the accused. Article 13, UCMJ; R.C.M.s 706 & 909; *Short v. Chambers*, 33 M.J. 49, 52 (C.M.A. 1991); 18 U.S.C. § 4241.

Chapter 10

CONSIDERATIONS PRIOR TO DETERMINING DISPOSITION OF CHARGES

Section 10A—Victims of Sexual Offenses: Views on Prosecutorial Jurisdiction

10.1. Consideration of Victim's Views on Jurisdiction and Disposition (R.C.M. 306(e)).

10.1.1. Victim Preference for Civilian or Military Prosecution. Victims of any sex-related offense that occurs in the United States have the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

10.1.1.1. Sex Related Offenses. For purposes of this requirement, qualifying sex-related offenses are allegations arising under Articles 120, 120a, 120b, 120c, or 125, UCMJ, including attempts thereof, which occurred prior to 1 January 2019; or any allegation arising under Articles 120, 120b, 120c, or 130, UCMJ, including attempts thereof, which occurred on or after 1 January 2019.

10.1.1.2. Obtaining Victim's Preference for Jurisdiction. In all cases where a sex related offense is alleged to have occurred in the United States, the SJA must obtain the victim's preference as to whether the case should be prosecuted by the military or civilian prosecutors as early in the process as possible. **(T-0).** Such preference will be obtained on the template found on the VMJD. If the victim declines to complete the form, the SJA must document on the template that the victim declined to complete the form. If seven days have passed from solicitation of the victim's preference without a response from the victim (or detailed VC), the SJA may presume that the victim does not wish to express a preference. A copy of the notification memorandum and the indorsement with the victim's preference must be maintained in the case file. Template notification memoranda are available on the VMJD.

10.1.2. Disposition Preference. Where the SPCMCA is considering taking no action or disposition by means other than court-martial, the SPCMCA will, through the SJA, solicit the victim's inputs prior to rendering a final decision. The SPCMCA should consider the victim's preferences prior to rendering a final decision. **(T-0).** If seven days have passed from solicitation of the victim's preference without a response from the victim (or detailed VC), the SJA may presume that the victim does not wish to express a preference as to disposition. Refer to DAFI 51-207 for additional information.

10.1.3. Civilian Prosecution Preferred.

10.1.3.1. If the offense was committed in an area of concurrent jurisdiction and the victim indicates a preference for civilian prosecution, the SJA should determine whether the victim has a preference for prosecution by the state or federal government or has no preference.

10.1.3.2. In the event the victim indicates they prefer civilian prosecution of the sex related offense, the SJA must notify the prosecutorial agency or agencies in that jurisdiction of the victim's preference. If the offense was committed in an area of exclusive federal jurisdiction and the victim indicates a preference for civilian prosecution, the SJA must

notify the United States Attorney's Office. The SJA must then notify the victim of the civilian agency's response. Forms for accomplishing both notifications are on the VMJD.

10.1.4. Although the victim's preference is not binding, the convening authority exercising IDA must consider the victim's views before taking action.

Section 10B—Initial Disposition of Qualifying Sex-Related Offense Allegation(s) (R.C.M. 306)

10.2. Initial Disposition of Qualifying Sex-Related Offense Allegation(s) (R.C.M. 306).

10.2.1. The Secretary of Defense has withheld IDA from all commanders within the DoD who do not possess at least SPCMCA and who are not in the grade of O-6 or higher, with respect to any of the following alleged offenses (regardless of the date the offense was allegedly committed):

10.2.1.1. Rape or sexual assault, in violation of Article 120, UCMJ;

10.2.1.2. Forcible sodomy, in violation of Article 125, UCMJ (which was in effect prior to 1 January 2019); and

10.2.1.3. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

10.2.2. For those offenses for which IDA is withheld, the subordinate commander forwards the case file, along with a written recommendation, to the convening authority with IDA.

10.2.3. The convening authority with IDA is responsible for determining what initial disposition action is appropriate, including whether further action is warranted. **(T-0).** R.C.M. 306 describes initial disposition as no action, administrative action, NJP, or disposition of charges (dismissing, referring, or forwarding for disposition to a superior or subordinate authority). The initial disposition by the convening authority with IDA may be to permit the subordinate commander to take action in the case in accordance with the subordinate commander's recommendation. **Note:** Preferral is not an initial disposition action, thus a subordinate commander may prefer charges before forwarding them to the convening authority with IDA for disposition.

10.2.3.1. The convening authority with IDA shall base the disposition decision upon review of the following:

10.2.3.1.1. Matters transmitted;

10.2.3.1.2. Court-martial charges, if any;

10.2.3.1.3. Any independent review and recommendation received;

10.2.3.1.4. Matters submitted by the accused, if any;

10.2.3.1.5. Victim input, if any;

10.2.3.1.6. Consultation with a judge advocate; and

10.2.3.1.7. The factors in the discussion under R.C.M. 306(b) and Appendix 2.1 to the MCM (The Secretary of Defense's Non-Binding Disposition Guidance).

10.2.4. The convening authority with IDA must provide the GCMCA (who would have been in the position to refer charges) in the grade of O-7 or above written notice of initial disposition

within 30 days following the date of the initial disposition decision. See [paragraph 10.3](#) The SJA supporting the convening authority with IDA should consider coordinating with the GCMCA/SJA to determine whether convening authority with IDA should await a GCMCA review decision prior to taking further action (e.g., send the case back to the subordinate commander for appropriate action or otherwise dispose of a case).

10.2.5. Collateral Misconduct. The withholding of IDA applies to all alleged offenses arising from or relating to an allegation of a qualifying offense as listed in paragraphs [10.2.1.1](#) – [10.2.1.3](#) This includes collateral misconduct by the accused or victim.

10.2.6. Safe-to-Report Policy. If there are allegations of collateral misconduct committed by a victim of an alleged sexual assault, the Safe-to-Report Policy required by section 539A of the FY 2021 NDAA, and implemented by the DoD prescribes how such misconduct will be handled. For purposes of the Safe-to-Report Policy, “sexual assault” is more broadly defined than for IDA purposes as described above: alleged penetrative and non-penetrative violations of the applicable version of Article 120, UCMJ; alleged violations of Article 125, UCMJ for acts of forcible sodomy of a victim age 16 years old or older, occurring before 1 January 2019; and alleged attempts and conspiracies to commit any of these offenses.

10.2.6.1. The Safe-to-Report Policy is applicable to any allegation of sexual assault, regardless of whether the victim has filed a restricted or unrestricted report. The threshold issue for the applicability of the Safe-to-Report Policy is determining whether the alleged collateral misconduct in question is “minor” or “non-minor.” The IDA’s determination is discretionary based on the totality of the circumstances involved in the case, but IDA must assess the alleged collateral misconduct against the delineated aggravating and mitigating circumstances at a minimum.

10.2.6.2. If the alleged collateral misconduct is deemed minor, then the Safe-to-Report Policy applies and the victim shall not be disciplined.

10.2.6.3. If the alleged collateral misconduct is non-minor, then the Safe-to-Report Policy does NOT apply and the victim could be subject to disciplinary action.

10.2.6.4. In addition to evaluating the nature of the alleged collateral misconduct itself, commanders shall take into account the following factors in determining whether the alleged collateral misconduct is minor or non-minor.

10.2.6.4.1. Aggravating circumstances include, but are not limited to, whether the alleged misconduct intentionally or unintentionally: (a) Threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the alleged perpetrator(s) of an assault; (b) Resulted or imminently threatened to result in failure of a specified military mission or objective; or (c) Resulted in significant damage to government property, or to the personal property of others, except when such damage was the collateral result of an assault and/or resulted from an act of self-defense.

10.2.6.4.2. Mitigating circumstances include, but are not limited to: (a) The victim’s age and military experience level; (b) Whether the suspect is in a position of authority over the victim or a higher grade than the victim; (c) Whether the suspect engaged in actions to stalk, harass, haze, coerce and/or otherwise influence the victim to engage in sexual behavior; (d) Whether the alleged collateral misconduct was known to command

prior to the report of sexual assault, and if not known, the likelihood that the alleged collateral misconduct would have otherwise been discovered, but for the victim disclosing or reporting the sexual assault; (e) The victim engaging in misconduct after the sexual assault, which may be related to symptoms of exposure to trauma; e.g., the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms.

10.2.6.5. Convening authorities exercising IDA retain discretion to make the final determination of whether the alleged collateral misconduct is minor or not, based on their analysis of aggravating and mitigating factors. Commanders shall consult with their servicing Staff Judge Advocate in reaching these determinations and shall make such determinations in writing. SJAs are required to track all such determinations to include why the collateral misconduct was deemed non-minor, or why the collateral misconduct was considered minor and subject to the Safe-to-Report Policy.

10.2.6.5.1. If the final determination is made that the alleged collateral misconduct is minor, the individual shall not be disciplined. In this context, the term “discipline” includes an officially documented command action that has been initiated against the victim in response to alleged collateral misconduct, including: letters of reprimand, counseling, or admonishment; written records of individual counseling in official personnel files; imposition of NJP; preferral of charges; initiation of involuntary administrative separation proceedings; or administrative demotion. This also includes discipline under cadet/midshipman regulations at the Military Service Academies.

10.2.6.5.2. This policy does not preclude the commander from fulfilling certain administrative requirements, for example: referral to substance abuse screening if the minor collateral misconduct involves any kind of substance abuse, referral to behavioral health or medical providers for a fitness for duty determination, or temporarily suspending access to critical positions such as positions in the personnel reliability program (PRP). It may be appropriate to temporarily decertify the victim from PRP status or other critical positions until appropriate evaluations can be conducted.

10.2.6.6. If the victim is a military member who falls under a separate chain of command, the convening authority exercising IDA shall consult with the SPCMCA in the victim’s chain of command and shall document such consultation in writing before making the determination as to whether the collateral misconduct is minor or not.

10.3. GCMCA Review of Initial Disposition Decision for Qualifying Sex-Related Offenses.

10.3.1. If the convening authority with IDA recommends no qualifying specifications under paragraphs 10.2.1.1 through 10.2.1.3 as to a victim be referred, see Section 13C for documentation and review requirements. Forwarding charges and specifications for referral to the GCMCA in the grade of O-7 or above satisfies this requirement, even in cases where the GCMCA subsequently declines to refer the charges.

10.3.2. When disposition of the alleged offense is complete, the GCMCA signs the written acknowledgment of the action by the convening authority with IDA. This responsibility is not delegable. A copy of this review serves as a notice of disposition and is forwarded by the legal

office supporting the SPCMCA to OSI. Refer to **Chapter 15** for additional information on disposition data submission to law enforcement. Templates are located on the VMJD.

10.3.3. If the convening authority assesses there is insufficient evidence to support the prosecution of a qualifying sex-related offense and decides not to refer such specification to a general or special court-martial, consult DAFI 51-207 for notification requirements to victims.

Section 10C—Coordination on All Cases Involving Separate but Concurrent Prosecution

10.4. Required Coordination for Cases Involving Concurrent Military and Civilian Prosecutions. Additional coordination is required before proceeding in cases where the military will prosecute some specifications and the local civilian authorities prosecute other offenses.

10.4.1. The servicing legal office shall coordinate with AFSFC and JAJG on the terms of the arrangement before entering into an arrangement or agreement with civilian authorities regarding the order in which the military and civilian cases will proceed and the order in which the accused will serve confinement, if convicted.

10.4.2. Specifically, the following matters should be considered and discussed with AFSFC and JAJG, as appropriate:

10.4.2.1. The impact the order of prosecution will have on the subsequent prosecution.

10.4.2.1.1. Estimated trial dates for the military or civilian authorities.

10.4.2.1.2. Likelihood of a delay.

10.4.2.1.3. Potential for loss of evidence and/or witnesses between investigation, first trial, and the second trial.

10.4.2.1.4. Impact of result of first trial on the prosecution of the second.

10.4.2.1.5. Impact of the order of military and civilian prosecutions may have on a plea agreement with the accused, if any.

10.4.3. The accused, if convicted, will remain in the military until the duration of military confinement is served. Therefore, if civilian confinement is served prior to military confinement, the accused will remain in the military for the duration of both the civilian confinement and the military confinement.

10.4.4. The impact a delay in serving military confinement may have on appellate rights of the accused.

Section 10D—Unlawful Command Influence (Article 37, UCMJ; R.C.M. 104)

10.5. Independent Command Authority. The military justice system must promote the independence of command authority and operate free of unlawful command influence. To ensure a fair and just outcome in every case, court-martial convening authorities, commanders, SJAs, and all personnel involved in the military justice process should be sensitive to unlawful command influence and circumstances that might lead to it. See Article 37, UCMJ.

Section 10E—Non-Binding Disposition Guidance

10.6. Non-Binding Disposition Guidance. Factors in the discussion under R.C.M. 306(b) and Appendix 2.1 to the MCM (The Secretary of Defense’s Non-Binding Disposition Guidance) must be considered in all disposition decisions. The guidance is non-binding in that it does not counsel for any particular outcome in a given case, but it does provide a consistent set of factors for commanders and JAGs to consider. Commanders and JAGs should treat each case individually, giving more or less weight to certain factors depending on the unique circumstances involved in each case.

Chapter 11

PREFERRAL OF CHARGES (ARTICLE 30, UCMJ; R.C.M. 307)

Section 11A—Miscellaneous Considerations Prior to Preferral of Charges

11.1. Secretary of Defense Non-Binding Disposition Guidance. The Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the MCM provides guidance which must be considered prior to disposition of charges by convening authorities, commanders, and legal practitioners.

11.2. Accuser is Senior to the Convening Authority. Consult R.C.M. 504(c)(2) and (3) when the accuser is senior in rank to the convening authority.

11.3. Effect of Preferral on Statute of Limitations in Lengthy Absence Cases. Effective 14 November 1986, SCMCAs are no longer required to receipt for charges alleging either desertion or absent without leave in order to toll the statute of limitations. Article 43, UCMJ. Therefore, where an unauthorized absence began after 14 November 1986, the statute of limitations is automatically tolled. With the exception of those cases involving desertion or absent without leave during a time of war, if the unauthorized absence began before or on 14 November 1986, the statute of limitations was tolled only (1) upon receipt of sworn charges and specifications by an officer exercising summary court-martial convening authority within the statute of limitations period; or (2) if the accused was absent from territory in which the United States has authority to apprehend the accused, in the custody of civil authorities, or in the hands of the enemy. Thus, charges are not viable in a case alleging desertion or an unauthorized absence which began before 14 November 1986, where preferral and receipt of charges was not accomplished, unless desertion or absence occurred during a time of war.

11.4. Involuntary Extension Beyond ETS.

11.4.1. DAF members may be involuntarily retained beyond their ETS to undergo court-martial. The involuntary extension may be done in anticipation of the preferral of charges to include cases still in the investigative stage. The SJA notifies the Air Force Personnel Center's (AFPC) Separations Branch in writing through the local Force Support Squadron Career Development Section. Contact the Force Support Squadron Career Development Section to ensure the written notice was sent to AFPC and the involuntary extension was completed. AFPC/JA is available to assist SJAs with involuntary extensions of expiration of term of service. **Note:** An "administrative hold" may affect a member's date of separation and prevent a permanent change of station or temporary duty, but it does not affect a member's expiration of term of service or equate to an involuntary extension. See AFI 36-2606; AFI 36-3208, *Administrative Separation of Airmen*; *Webb v. United States*, 67 M.J. 765 (AFCCA 2009).

11.4.2. Time spent in confinement is considered "lost time" or non-creditable service if the member is currently serving on an original enlistment, reenlistment or a voluntary extension of an enlistment. Time spent in confinement is not considered lost time if the member is serving on an involuntary extension of an enlistment. The member's expiration of term of service date will be adjusted to reflect either the amount of time the member spent in confinement, or the amount of time from date of confinement until the member reached their expiration of term of service in confinement, thereby extending the member's ETS. This is a result of the fact that a member signs a contract for a period of time, and the member still owes

the government the amount of time that was lost to confinement. This is an automatic process that cannot be waived.

11.5. Retirement Holds and Other Actions Taken to Suspend or Cancel Separation Processing. If a member has applied to retire or has been approved to retire, the retirement may be suspended or cancelled by contacting the AFPC Retirements Branch with notice that the member is under investigation. If charges do not materialize or a punitive discharge is not adjudged at trial, the member's retirement may be reinstated or they may reapply for retirement. Note that the common "administrative hold" may stop a member's permanent change of station or temporary duty, but it does not prevent a member from retiring on an approved retirement date or separating on an approved separation date. See AFI 36-3203, *Service Retirements*.

11.6. Accused With Prior Adjudged Punitive Discharge. If an accused has an adjudged but unexecuted punitive discharge, the SJA for the SPCMCA immediately notifies JAJM concerning preferral of new charges, with information copies sent to the appropriate GCMCA and MAJCOM SJA. This notice enables JAJM to ensure that the execution of the previous punitive discharge does not occur, providing continuing court-martial jurisdiction over the accused.

11.7. Recoupment. If an accused received education assistance, special pay, or bonus money and faces separation or discharge before completion of the agreed-upon period of active duty, notice of recoupment should be given when court-martial charges are preferred, in accordance with 10 U.S.C. § 2005, *Advanced education assistance: active duty agreement; reimbursement requirement*, or 37 U.S.C. § 303a(e), *Special Pay: general provisions*. The member should sign a statement of understanding regarding recoupment. A template is located on the VMJD. This notice is included in the ROT as an attachment in accordance with DAFMAN 51-203, *Records of Trial*.

Section 11B—Preferral of Charges (Article 30, UCMJ; R.C.M. 307)

11.8. Preparing the Charge Sheet for Preferral (DD Form 458, Charge Sheet).

11.8.1. Prepare charges and specifications on the DD Form 458, *Charge Sheet*. The Charge Sheet is prepared by inputting the data into AMJAMS and printing the electronic version of the DD Form 458. (**Note:** If AMJAMS is unavailable, a charge sheet may be accomplished manually but must be updated immediately in AMJAMS once it becomes available.) Information in AMJAMS is reflected as follows:

11.8.1.1. Blocks 1, 2, 3, and 4. Autofill information in AMJAMS from AFPC and ensure its accuracy. Make pen and ink changes to the charge sheet to reflect any change in the accused's grade prior to arraignment by lining through and keeping the information legible. Government counsel should initial and date any changes. Changes should be updated in AMJAMS.

11.8.1.2. Block 5. Enter the accused's assigned organization under the "Duty Status" tab. The address should reflect the base name, state and zip. Ensure the correct pull down is selected for the applicable MAJCOM or FLDCOM. For the squadron, enter "111th Civil Engineer Squadron," not "111th Civil Engineer Squadron Section." For ARC members serving on extended active duty, use the organization to which they are attached for active duty.

11.8.1.3. Block 6. The accused's current service is the date the current enlistment began for enlisted personnel or the Total Active Federal Military Service Date (TAFMSD) for officers. Extensions do not change the current enlistment date. This information can be found in the accused's personnel records or in the record review listing prepared by the servicing personnel office. Double check the Reports on Individual Personnel (RIPs) against the information auto-filled from AFPC.

11.8.1.4. Block 7. The accused's current pay per month, to include cents, is entered automatically based on the listed grade and should be updated if necessary. If the accused's grade changes prior to the announcement of sentence, the pay may be corrected with a pen and ink change and initials. **Note:** Pay may also require correction if the incorrect grade is listed, the accused is promoted or demoted, or the accused is brought to trial in a subsequent calendar year.

11.8.1.5. Blocks 8 and 9. Include any form of restraint, including restraint by civilian authorities at the request of the Air Force. An example of this is when a member in "absent without leave" or "deserter" status is apprehended by civilian police and incarcerated or detained until DAF officials take custody of the accused. This is accomplished by adding the pretrial restraint folder under the pretrial information data in AMJAMS.

11.8.2. **Charges and Specifications.** Consult R.C.M. 307 and refer to the sample specifications in the MCM, Part IV, and the Military Judges' Benchbook, DA Pamphlet 27-9. AMJAMS will autofill the charge and specification indicators. When alleging Article 134, UCMJ, offenses, ensure the specification alleges the terminal element, as required by R.C.M. 307(c)(3). Use caution when reviewing lesser included offenses (LIOs) listed in the MCM, Part IV, to ensure the LIOs comport with the elements test set forth in *United States v. Jones*, 68 M.J. 465 (CAAF 2010) or, for offenses committed on or after 1 January 2019, are lesser included offenses designated by the President. 10 U.S.C. § 879.

11.8.2.1. Format. Type the words "CHARGE" and "ADDITIONAL CHARGE" in all capital letters. "Specification" includes upper and lower case letters. Where more than one charge or specification is alleged, charges are numbered with Roman numerals (e.g., I, II, III) and specifications with Arabic numbers (e.g., 1, 2, 3). A single charge or specification is not numbered.

11.8.2.2. Additional Charges. When additional charges are preferred, add an "Additional Charges Preferred" Folder in AMJAMS. If more charges are preferred after preferral of additional charges, add another "Additional Charges Preferred" folder in AMJAMS. AMJAMS will label each new set of charges with written numbers (e.g., SECOND ADDITIONAL CHARGES, THIRD ADDITIONAL CHARGES).

11.8.2.3. Identification of the Accused. In the specifications, identify the accused by present grade, followed by the grade on the date of the alleged offense, if different. Use all capital letters. List known aliases. List the member's armed force. Do not include the MAJCOM or FLDCOM. For example. "In that TECHNICAL SERGEANT ADAM P. SMITH, United States Air Force, alias CAPTAIN JACK P. SMITH, United States Air Force, 401st Maintenance Squadron, did,..." **Note:** Change the accused's rank from the current rank to the rank at the time of the allegation only if pertinent to the offense charged. R.C.M. 307(c)(3), Discussion.

11.8.2.4. Identification of Victim. If the alleged victim is identified in the specification, do not put the victim's name or rank in all capital letters.

11.8.2.4.1. Victims of Sex-Related Offenses. Do not substitute initials for the name of sex offense victims. Initials will be substituted in an expurgated Statement of Trial Results (STR) and EoJ, if applicable.

11.8.2.4.2. Minors. Do not substitute initials for the name of children or minors listed in specifications, regardless of the nature of the offense charged. Initials will be substituted in an expurgated STR and EoJ, if applicable.

11.8.2.5. Pleading Check Cases. Where the offense involves use of a worthless check rather than a forged check, the contents need not be pled verbatim. See the Military Judges' Benchbook, DA Pamphlet 27-9, and the sample specifications on the VMJD.

11.8.2.6. Pleading Child Pornography Cases. Exercise care in drafting specifications in a case involving multiple images of child pornography. See *United States v. Piolunek*, 72 M.J. 830 (AFCCA 2013), *aff'd*, 74 (CAAF 2015). The best method of pleading a child pornography case will depend on the facts unique to that case.

11.8.2.7. Pleading Article 93a, UCMJ, Cases. SecAF has promulgated required definitions for the offenses chargeable under Article 93a, UCMJ, in AFI 36-2909, *Air Force Professional Relationships and Conduct*. Counsel for the government must carefully review these definitions prior to drafting charges and specifications for such offenses to ensure the alleged misconduct fits under these definitions.

11.9. Forwarding of Charges (R.C.M. 401). The commander forwards the charges to the convening authority by attaching an indorsement to the charge sheet. Attach a personal data sheet on the accused and a copy of the report of investigation or other evidence supporting the charges. The base legal office should redact Privacy Act information not relevant to the charges from documents before forwarding them to the convening authority. The commander signs and dates the indorsement when preferring charges or when forwarding charges preferred by another. The first indorsement must give each attachment a descriptive name (e.g., "Report of Investigation dated 1 January 2019" or "AF 1168 of Amn Snuffy", not "Evidence"). Address the indorsement to the officer exercising special court-martial convening authority over the accused. If additional charges are later added, forward them with a new indorsement.

11.10. Receipt of Charges (R.C.M. 403). A judge advocate may receipt for charges on behalf of the SPCMCA if the convening authority delegates that authority in writing. If delegated, receive the charges "FOR THE COMMANDER."

Chapter 12

ARTICLE 32, UCMJ, PRELIMINARY HEARINGS

12.1. Applicable Rules. Conduct preliminary hearings in accordance with the guidance and procedures prescribed in R.C.M. 405, this chapter, and the PHO's Guide. In the recommendation required by R.C.M. 405(1)(2)(J), the PHO must include a discussion of relevant factors in Appendix 2.1 to the MCM (The Secretary of Defense's Non-Binding Disposition Guidance).

12.2. Preliminary Hearing Personnel.

12.2.1. PHO.

12.2.1.1. The convening authority directing a preliminary hearing will appoint an impartial judge advocate as the PHO. **(T-0).**

12.2.1.2. The accuser may not serve as the PHO.

12.2.1.3. The PHO shall be equal to or senior in grade to military counsel detailed to represent the accused and the government at the preliminary hearing unless the SJA expressly determines this to be impracticable. **(T-0).**

12.2.1.4. The PHO shall be certified under Article 27(b), UCMJ. If precluded by military necessity or other compelling circumstances, the PHO may be a judge advocate who is not certified under Article 27(b), UCMJ.

12.2.1.5. The PHO may be a military judge. Requests for a military judge to serve as a PHO are coordinated with JAT. No judge who has served on a pre-referral proceeding pursuant to Article 30a, UCMJ, may be detailed to an Article 32, UCMJ, preliminary hearing in the same case.

12.2.1.6. An ARC judge advocate may be detailed to serve as a PHO while on active duty or performing IDT. Article 136(b), UCMJ, authorizes AFR judge advocates to administer oaths while on active duty or performing inactive duty training. ANG judge advocates must be on Title 10 orders. **(T-0). Note:** Recommend all installations verify the certification status of a AFR or ANG judge advocate before appointment. Certification status of all judge advocates may be verified via the AF/JAX Knowledge Management page utilizing the annually published JAG Order 1 and JAG Order 2.

12.2.2. Counsel.

12.2.2.1. Counsel for the Government. A judge advocate, who is not the accuser, serves as counsel to represent the United States. The judge advocate serving as the counsel for the government need not be certified under Article 27(b), UCMJ.

12.2.2.2. Counsel for the Accused. The accused has the right to be represented by military defense counsel certified under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ. The accused may also be represented by civilian defense counsel at no expense to the government. Article 38, UCMJ. Civilian defense counsel must take an oath to perform their duties faithfully when representing an accused. The PHO administers this oath. Upon request of the accused, the accused is entitled to a reasonable time to obtain civilian counsel and have civilian counsel available for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for the accused to obtain and have present civilian

counsel. **(T-0).** See R.C.M. 405(d)(3). The accused may represent him or herself, but this right is not absolute. See *United States v. Bramel*, 29 M.J. 958 (A.C.M.R. 1990), aff'd, 32 M.J. 3 (C.M.A. 1990).

12.2.3. Court Reporter. A court reporter is not normally detailed to a preliminary hearing. A court reporter may be detailed by JAT. See DAFMAN 51-203.

12.2.4. Interpreter. An interpreter may be requested and detailed by the appropriate convening authority.

12.3. Pre-Hearing Matters.

12.3.1. Appointment of PHO (R.C.M. 405(b)). A convening authority directs an Article 32, UCMJ, preliminary hearing by appointing the PHO in writing. A template is available on the VMJD.

12.3.2. Delays and Resulting Speedy Trial Issues. The convening authority may approve a delay of the Article 32, UCMJ, preliminary hearing. The period of time of such approved delays are excluded when determining whether the period in R.C.M. 707(a) has run. The convening authority may delegate the authority to grant a delay to an Article 32, UCMJ, PHO. The convening authority may also grant the PHO the authority to exclude time under R.C.M. 707(c). The PHO has no independent authority to exclude time under R.C.M. 707(c).

12.3.3. Disclosures Prior to Preliminary Hearing.

12.3.3.1. R.C.M. 404A Disclosures. As soon as practicable, but no later than five days after the convening authority directs the preliminary hearing, counsel for the government must provide the defense copies of the matters listed in R.C.M. 404A. **(T-0).** If provision of copies is impracticable, counsel for the government must permit the defense to inspect the matters listed in R.C.M. 404A. **(T-0).**

12.3.3.2. Should government counsel fail to comply with the provisions of R.C.M. 404A, the PHO shall note the issue in the preliminary hearing report. Further, if the convening authority has given the PHO the authority to grant delays, the PHO may grant a reasonable delay to allow government counsel to comply with the above disclosure requirements.

12.3.3.3. R.C.M. 405(h) Disclosures. Prior to the preliminary hearing, government and defense counsel shall provide to opposing counsel and the PHO notice of the matters listed in R.C.M. 405(h). The PHO may set earlier timelines for such disclosures which must be followed by counsel. **(T-0).**

12.4. Victims' Rights Regarding the Preliminary Hearing. See DAFI 51-207 and the Article 32, UCMJ, PHO Guide on the VMJD for further guidance on specific victims' rights.

12.5. VC Access to Hearing. VCs are entitled to attend all open sessions (i.e., open to the public) and all closed sessions (i.e., not open to the public) involving their clients. **(T-0).**

12.6. Production of Witnesses. Follow the rules and procedures in R.C.M. 405(h) for the production of witnesses. See DAFI 51-207 for additional guidance.

12.7. Production of Evidence. Follow the rules and procedures in R.C.M. 405(h) for the production of evidence.

12.8. Recording the Preliminary Hearing.

12.8.1. **Video and Audio Recording of the Preliminary Hearing.** Government counsel shall ensure the preliminary hearing is recorded by a suitable government recording device. Government counsel shall also use a secondary suitable recording device to create a back-up recording.

12.8.2. **Transcribing the Preliminary Hearing.** The SJA may authorize the completion of a verbatim transcript following the hearing; though a verbatim transcript is not required.

12.8.3. **Providing Preliminary Hearing Recording to the Victim(s).** Upon written request from a victim or VC of a victim named in one of the specifications, government counsel shall provide the victim or VC with access to, or a copy of, the recording. **(T-0).** Do not provide any portions of the recording ordered sealed by the PHO to the victim or VC. **(T-0).** Trial counsel is not normally required to redact the recording except as indicated below. However, to maintain compliance with the Privacy Act, the government should release the recording in the following manner:

12.8.3.1. If the victim is represented by a VC, the unredacted recording should be provided to the victim's VC as an official use disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2. The VC must maintain the recording in accordance with the Privacy Act. **(T-0).**

12.8.3.2. If the victim is represented by a civilian VC, the recording should be provided to the VC in accordance with [paragraph 8.5.5](#). See DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2. The civilian VC must maintain the recording in accordance with the Privacy Act. **(T-0).**

12.8.3.3. An unredacted recording may be provided directly to the victim only if the victim is not represented by counsel. The recording is provided to an unrepresented victim as a routine use disclosure under the Privacy Act system of records notice for Air Force court-martial records. See SORN, DoD 0006.

12.8.3.4. The Government may, in its discretion, provide a transcript to the victim or VC instead of a recording. See R.C.M. 405(j)(5). Personally identifiable information should be redacted from transcripts provided directly to victims.

12.8.4. **Providing Preliminary Hearing Recording to the Accused.** The accused will receive a copy of the preliminary hearing report, which includes a copy of the recording. **(T-0).** Do not provide any portions of the recording ordered sealed by the PHO to the accused or counsel. **(T-0).**

12.9. Conducting the Preliminary Hearing. Conduct the preliminary hearing in accordance with R.C.M. 405(j) and the Article 32, UCMJ, PHO's Guide.

12.9.1. **Public Access.** Ordinarily, preliminary hearings are open to the public, including access by news media, whenever possible. See R.C.M. 405 and the Article 32, UCMJ, PHO's Guide on the VMJD for further guidance.

12.9.2. **Potential Witnesses.** Although potential witnesses are normally excluded from watching the proceedings, the PHO has the authority to permit some potential witnesses (e.g., experts) to be present if the PHO considers their presence helpful to the proceedings. Victims

have an Article 6b, UCMJ, right to be present at the preliminary hearing regardless of whether they testify.

12.9.3. Uncharged Offenses.

12.9.3.1. Authority to Examine Other Offenses. The PHO may consider uncharged offenses as outlined in R.C.M. 405(e)(2).

12.9.3.2. Later Preferral of Uncharged Offenses Examined at Preliminary Hearing. If an uncharged offense examined by the PHO in the preliminary hearing is later preferred, the GCMCA may refer the offense to court-martial without convening an additional preliminary hearing, provided the SJA's Article 34, UCMJ pretrial advice addresses the offense. See R.C.M. 601(d)(2).

12.9.4. The Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the 2019 MCM provides guidance the convening authority should consider before referring charges. In making their recommendation, the PHO is encouraged to address all factors in Appendix 2.1 that are relevant to the facts and charges in the case under review.

12.10. Supplementary Information. No later than 24 hours after the preliminary hearing closes, supplemental matters may be submitted in accordance with R.C.M. 405(k). **(T-0).** The parties and the victim(s) must follow the procedures in R.C.M. 405(k) when submitting supplemental information to the PHO. **(T-0).** The PHO must follow the procedures in R.C.M. 405(k) for the handling, sealing and examination of supplementary information. **(T-0).**

12.11. Assembly of the PHO Report. The PHO shall assemble the preliminary hearing report in accordance with R.C.M. 405(l). **(T-0).** In addition to those items listed in the rule, the preliminary hearing report will contain: DD Form 457, *Preliminary Hearing Officer Report*, and any attachments; DD Form 458, *Charge Sheet*, and any attachments; and the PHO appointment letter. Additionally, the PHO must include a copy of the preliminary hearing recording. **(T-0).**

12.12. Distributing the PHO Report. The PHO shall deliver the PHO Report to the appropriate SJA within eight days after the closure of the preliminary hearing or timely receipt of supplementary information under R.C.M. 405(k), whichever is later. The SJA, in turn, delivers the report to the convening authority who directed the preliminary hearing. The convening authority must cause the PHO Report to be served on the accused and defense counsel. **(T-0).** Government counsel must obtain a receipt from the accused upon service of the PHO Report. VC requests for copies of the PHO Report shall be processed as a For Official Use disclosure under the Privacy Act. **(T-0).** See [Section 8B](#); DoD 5400.11-R, *Department of Defense Privacy Program*. The VC must maintain the recording in accordance with the Privacy Act. Likewise, civilian victim's counsel requests should be processed in accordance with [paragraph 8.5.5](#).

12.13. Objecting to the PHO Report. Any objections to the PHO Report must be submitted in accordance with R.C.M. 405(l)(5) within five days of receipt. **(T-0).** The day the accused receives the report is not counted in calculating the five-day window in which the accused may raise objections. The convening authority may refer the charge(s) or take other action within this five-day period. R.C.M. 405(l)(5).

12.14. Forwarding the PHO Report to a Superior Convening Authority.

12.14.1. If the convening authority who directed the preliminary hearing decides to forward the PHO report to a superior convening authority for disposition, the convening authority who

directed the hearing must prepare a forwarding letter providing a recommendation for disposition of the charge(s). The forwarding letter will include the following attachments: the charge sheet, the commander's indorsement to the charge sheet, and the PHO Report, with the attachments appended to the report. This letter is forwarded to the superior convening authority through the superior convening authority's SJA.

12.14.2. If the subordinate convening authority recommends disposition by court-martial, then the subordinate convening authority's SJA should provide a list of court member nominees and member data to the superior convening authority in the event the superior convening authority decides to refer the case.

12.15. Reviewing Sealed Materials in or Attached to a PHO Report. Refer to R.C.M. 1113 for authority, limitations, and procedures relevant to review of sealed materials in or attached to a PHO Report.

Chapter 13

FORWARDING AND DISPOSITION OF CHARGES

Section 13A—Pretrial Advice

13.1. Pretrial Advice in General Courts-Martial. The convening authority's SJA must prepare written pretrial advice for every GCM in accordance with R.C.M. 406. **(T-0).** A person other than the SJA may prepare the pretrial advice, but the SJA is, unless disqualified, responsible for and must personally sign the pretrial advice. The DSJA or other assistant staff judge advocate performing the duties of the SJA, in the absence of, or because of the disqualification of the SJA, signs "Acting as the Staff Judge Advocate."

13.1.1. Required Contents. The required contents for pretrial advice are prescribed in R.C.M. 406(b). SJAs should understand the difference between a specification that is supported by probable cause but carries litigation risk versus a specification that is not supported by probable cause. A finding that there is not probable cause to believe the accused committed the offense charged in a specification prohibits that convening authority from referring that specification. SJAs should make such a finding only when advising the convening authority that the specification cannot be referred to trial. See Article 34(a)(1)(B), UCMJ, and *United States v. Murray*, 25 M.J. 445 (C.M.A. 1988).

13.1.2. Format and Length. Pretrial advice need not contain any underlying analysis or rationale for the conclusions contained in it. In addition, lengthy summaries of evidence, detailed explanations of elements of offenses, and extensive discussions of possible defenses are not required. A sample format for pretrial advice is available on the VMJD.

13.1.3. Capital Cases. In order to refer a case as capital, the pretrial advice must specify whether there is probable cause to establish any of the aggravating factors required under R.C.M. 1004(c). **Note:** A special instruction must be included on the charge sheet in order to put the accused on notice of the capital nature of the case. **(T-0).** See R.C.M. 201(f)(1)(A)(iii); R.C.M. 1004(b)(1)(A).

13.1.4. Distribution. The government shall provide a copy of the pretrial advice to the defense for service upon the accused if charges are referred to a general court-martial. **(T-0).**

13.2. Pretrial Advice in Special Courts-Martial (Article 34, UCMJ; R.C.M. 406A). Before referral of charges to a SPCM, to include a SPCM by a military judge alone, the convening authority shall consult a judge advocate on relevant legal issues. **(T-0).** Pretrial advice by a judge advocate in a SPCM does not need to be in writing and does not need to come directly from the SJA. However, any pretrial advice reduced to writing must be provided to defense counsel if charges are referred.

13.3. Pretrial Advice in Summary Courts-Martial. Pretrial advice is optional for SCMs.

13.4. Non-Binding Disposition Guidance. In addition to the pretrial advice, the Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the 2019 MCM provides guidance the convening authority should consider before referring charges. The Non-Binding Disposition Guidance must be discussed either in the pretrial advice or directly with the convening authority.

13.5. Forwarding of Pretrial Advice in General Courts-Martial. The charge sheet, the commander's indorsement, forwarding letters or other indorsements, and, if applicable, the PHO's appointment letter with attachments (including the Article 32, UCMJ, preliminary hearing report, receipts of report, and any objections) should be forwarded with the pretrial advice to the GCMCA. If the preliminary hearing is waived, forward the accused's waiver along with the documentary evidence that the SJA relied upon when drafting the pretrial advice, such as investigative reports, witness statements, and other documents containing relevant information. If the GCMCA must detail members to a court-martial to try the forwarded case, appropriate documentation should be forwarded for court-member selection. See [Section 14A](#).

Section 13B—Dismissal of Charges

13.6. Annotating the Charge Sheet for Charges Dismissed Prior to Referral. If the convening authority determines some or all of the charges or specifications will be dismissed instead of referred to court-martial, the dismissed charges or specifications should be "Z-ed" out on the charge sheet and annotated with the dismissal date and the initials of the person who lined through the charges (e.g., "Dismissed on 15 Sep 18, [initials]"). This may be accomplished by the convening authority, a judge advocate authorized to sign referrals on the convening authority's behalf, or the trial counsel at the direction of the convening authority. Such delegation does not have to be in writing. The remaining charges, if any, are renumbered as necessary. **Note:** Charges or specifications dismissed by a military judge are not ordinarily lined out on the charge sheet. See the VMJD for guidance on how to complete post-trial paperwork to reflect such dismissals.

Section 13C—Superior Review of Convening Authority Decision Not to Refer Specific Sex Offense Charges

13.7. General Court-Martial Convening Authority Decision Not to Refer Certain Sex Offense Charges.

13.7.1. In cases where the GCMCA does not refer any covered specifications for a particular victim, the GCMCA forwards the decision to a superior convening authority for review as described below. **(T-0).** If at least one covered specification is referred as to each victim, then the review is not required. This requirement is victim-specific. See [paragraph 10.2](#) for the list of covered sex offenses. See also FY 2014 NDAA, Section 1744(d).

13.7.2. Superior General Court-Martial Convening Authority (GCMCA) Review of Non-Referral Decision. In any case where the SJA's pretrial advice recommends against referring a covered charge or specification to a court-martial and the GCMCA concurs, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined at [paragraph 13.7.4](#), to the next superior GCMCA for review. Template notifications and responses are on the VMJD.

13.7.3. SecAF Review of Non-Referral Decision. In any case where the GCMCA SJA's pretrial advice recommends referring a covered charge or specification to a court-martial and the GCMCA non-concurs, such that the effect of that non-concurrence is that no covered offense as to that victim would be referred to trial, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined in [paragraph 13.7.4](#), to SecAF for review. The case file is transmitted to JAJI through functional channels. A template for SecAF's response is located on the VMJD.

13.7.4. Request for SecAF Review of Non-Referral Decision. In addition to the circumstances mandating SecAF review described in [paragraph 13.7.3](#), the Chief, JAJG, may request SecAF review in any case where the GCMCA decides not to refer the charge and any specification described in [paragraph 10.2](#).

13.7.4.1. Case File Required Contents. The case file that is forwarded to SecAF or GCMCA under [paragraph 13.7.3](#) shall include: **(T-0)**.

13.7.4.1.1. All charges and specifications preferred;

13.7.4.1.2. All reports of investigations, including but not limited to the Article 32, UCMJ, PHO report, the OSI report of investigation, and any report of investigation by a military or civilian criminal investigative organization;

13.7.4.1.3. A certification that the victim of any alleged offense described in [paragraph 10.2](#) was notified of the opportunity to express a preference as to disposition of the alleged offense for consideration by the convening authority. See [paragraph 10.2](#) A template is located on the VMJD.

13.7.4.1.4. All statements from the victim provided to OSI and to the victim's chain of command relating to any alleged offense described in [paragraph 10.2](#);

13.7.4.1.5. Any statement provided by the victim to the convening authority expressing the victim's view on the preferred disposition of the pertinent alleged offense(s);

13.7.4.1.6. The SJA's Pretrial Advice pursuant to Article 34, UCMJ;

13.7.4.1.7. A written statement from the GCMCA explaining the reasons for the decision not to refer charges or specifications for trial by court-martial; and

13.7.4.1.8. A certification that the victim of any alleged offense described in [paragraph 10.2](#) was informed of the GCMCA's decision to forward the case for review under [paragraph 13.7.3](#).

13.7.4.2. Additional Matters. Additional matters may be included in the case file.

13.7.4.3. Applicable templates for the contents of the case file can be found at the VMJD.

13.7.5. Victim Notification of Results of Superior Review. The SJA ensures the victim of any offense described in [paragraph 10.2](#) is notified of the forwarding of the case for superior GCMCA or SecAF review. The victim must be notified of the results of the review conducted by SecAF or superior GCMCA. Templates for these documents can be found on the VMJD.

Section 13D—Referral of Charges

13.8. Referral of Charges to Court-Martial (R.C.M. 601). The convening authority must sign either the referral section on the DD Form 458, *Charge Sheet*, or another document reflecting the intention to refer charges to trial by court-martial. Such other documents may include concurrence with an SJA's pretrial advice and recommendation to refer the case to trial by a specified court-martial.

13.8.1. Completing the Referral Block on Charge Sheet. The designation of the convening authority on the charge sheet should be the same as on the convening order. The date should

be the date the convening authority referred the charges. If the convening authority personally signs the referral, the language of “By... Command or Order ... of...,” should be stricken and the convening authority’s signature block should be included. If the convening authority delegated authority to sign the referral block on the charge sheet to a judge advocate, the judge advocate signs the referral “FOR THE COMMANDER.”

13.8.1.1. Special instructions should be included in the referral block when appropriate. See R.C.M. 601(e). For example, when additional charges are referred, the following language should be included: “To be tried with the original (charge) (charges), dated [date of preferral of original charge(s)].” When a case is referred as a capital case, the following language should be included: “To be tried as a capital case.”

13.8.1.2. When a case is referred to a SPCM by military judge alone under Article 16(c)(2)(A), UCMJ, the following language should be included: “To be tried by a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), UCMJ.”

13.8.1.3. The SJA to the SPCMCA ensures the accused’s records are examined to ascertain the accused’s nationality no later than twenty-four hours after referral, even if a claim of foreign nationality has not been made. See [Section 23D](#).

13.8.1.4. The SJA to the SPCMCA ensures that OSI and SF/S2I are sent copies of referred charge sheets within five duty days of referral.

13.8.1.5. A copy of the referred charge sheet must be served upon the accused in accordance with R.C.M. 602.

13.8.2. **Disqualification of Convening Authority (R.C.M. 601(c)).**

13.8.2.1. Convening authorities may not refer charges to a GCM or SPCM if they are also the accuser of those charges. **(T-0)**. Further, a convening authority with “an interest other than an official interest in the prosecution of the accused” is disqualified from referring that case to court-martial. **(T-0)**. Article 1(9), UCMJ.

13.8.2.2. If the SPCMCA is disqualified, the case is forwarded to the GCMCA. If the GCMCA is disqualified, the GCMCA’s superior convening authority determines who shall act as the convening authority. If there is not an appropriate GCMCA within the command, the MAJCOM or FLDCOM SJA requests assistance from JAJM in the designation of a commander to serve as the GCMCA.

13.8.3. **Referral Authority for Certain Sex Offenses (R.C.M. 201(f)(1)(D))** . Only a GCM has jurisdiction over the following offenses if committed on or after 24 June 2014:

13.8.3.1. Rape or sexual assault, in violation of Article 120, UCMJ;

13.8.3.2. Rape of a child or sexual assault of a child, in violation of Art 120b, UCMJ;

13.8.3.3. Forcible sodomy, committed prior to 1 January 2019, in violation of Article 125, UCMJ (2016 and earlier editions); and

13.8.3.4. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

13.8.3.5. For offenses committed on or after 1 January 2019, conspiracy to commit the above offenses, in violation of Article 81, UCMJ. See Article 56, UCMJ.

13.9. “Re-referral” of Charges. After charges are referred to trial by court-martial, it may become necessary to withdraw and refer them anew on the same charge sheet. The following procedures are used for re-referring charges in rehearings and other cases, including withdrawn charges:

13.9.1. Withdrawal of Previous Charges. Prior to “re-referral,” the SJA or trial counsel must “Z-out” Block V on the back of DD Form 458, then annotate “withdrawn” and initial and date. See [paragraph 16.2.1](#).

13.9.2. New Referral. After withdrawal of the previous charges, the new referral is documented in the same format as that on page two of the charge sheet, following the rules in [paragraph 13.8.1](#). The new referral is accomplished by using the referral section from page two of a blank DD Form 458. When completed, the new referral section should be cut out and attached to the charge sheet by stapling it immediately above the original referral section. A prior referral should never be removed or destroyed. If a third or subsequent referral is necessary, it should be attached in the same way as the second. Any new referral must include service on the accused.

13.9.3. Special Instructions for Rehearings. When a case is referred for a rehearing (whether in full, for a limited purpose, or for a new trial), the appropriate instructions should be incorporated in the referral section. R.C.M. 810. For example, in a rehearing on sentence only, the following special instruction should be included: “For a rehearing on sentence only, as ordered by General Court-Martial Order No. 17, Headquarters, 18 AF, dated 18 January 2019, as to the charge(s) and specification(s) affirmed by the Air Force Court of Criminal Appeals, dated 10 February 2019,” or a similar instruction.

Section 13E—Reporting Referral of Additional Charges in Cases Pending Appellate or Post-Trial Review

13.10. Notification of Referral of Later Charges in Pending Cases.

13.10.1. Notification to JAJM. If charges are referred to trial against a person who is the accused in a case under review under Articles 66, 67, 67a, or 69, UCMJ, the headquarters referring the new charges must notify JAJM immediately. The case currently under review is identified by the accused’s full name, rank, and SSN and the case’s Army Court-Martial number (ACM), if available. The following information should also be provided: the nature of the new charges, the date referred, type of court-martial, anticipated date of trial, a brief statement of facts of the case, and any other information that might affect disposition of the current review concerning the case.

13.10.2. Follow-Up Messages. Follow-up messages should be sent to JAJM to advise when trial is completed (including the result), if the charges are withdrawn, or if there are other significant developments which may affect disposition of the case currently under review.

Section 13F—Referral to Limited Special Court-Martial (Article 16(c)(2)(A), UCMJ)

13.11. General Provision. A limited special court-martial is a type of special court-martial that has a statutory sentence cap of six months of confinement and no ability to adjudge a punitive discharge. In a limited special court-martial, a military judge is always the finder of fact and sentencing entity; the accused may not request trial by members. No specification may be tried

by a special court-martial consisting of a military judge alone if, before arraignment, the accused objects on the grounds provided in R.C.M. 201(f)(2)(E)(i)(I-II) and the military judge determines that either of the grounds are met. The convening authority may only refer a case to this forum if all of the charged offenses occurred on or after 1 January 2019.

13.12. Required Language on Charge Sheet. See [paragraph 13.8.1.2](#).

13.13. Notice to Accused. Inclusion of the special language in [paragraph 13.8.1.2](#) serves as notice to the accused that the charges are being referred to a limited special court-martial.

13.14. Objection by Accused for Offenses Carrying More Than Two Years Maximum Confinement. If the specifications preferred include violations of offenses for which the maximum authorized confinement at a GCM exceeds two years, excluding wrongful use or possession of a controlled substance under Article 112a(b), UCMJ, the accused may object to the forum choice at any point prior to arraignment. R.C.M. 201(f)(2)(E)(I). Though the accused may raise an objection at any time prior to arraignment in any manner, if the objection is raised at the arraignment proceedings, the objection must be articulated on the record.

13.15. Objection by Accused for Offenses Requiring Sex Offender Notification. If the specification preferred would result in notification as a sex offender, the accused may object at any point prior to arraignment. R.C.M. 201(f)(2)(E)(II). Though the accused may raise an objection at any time prior to arraignment in any manner, if the objection is raised at the arraignment proceedings, the objection must be articulated on the record.

Section 13G—Transferring Charges

13.16. Transferring Charges to Parallel Convening Authority (R.C.M. 601(g)). If it is impractical for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if already referred, to be transmitted to a parallel convening authority (defined as a convening authority of the same level, such as transfer from one SPCMCA to another SPCMCA). This transmittal must be in writing. The original convening authority's SJA coordinates with JAJM and the gaining convening authority's SJA to transfer the case.

Chapter 14

CONVENING COURTS-MARTIAL

Section 14A—Detailing Members (R.C.M. 501, 502, 503, 912A; Articles 25, 29, UCMJ).

14.1. General Provision. Convening authorities detail the best qualified persons for courts-martial in accordance with the criteria in Article 25(e)(2), UCMJ, and R.C.M. 502(a)(1). Convening authorities may detail members under their command or others made available by the appropriate commander. When detailing court members, convening authorities may consider nominees submitted by subordinate commanders.

14.2. Detailing Enlisted Members. If the accused is enlisted, the convening authority may detail a court-martial panel of entirely officer members, entirely enlisted members, or a combination of officer and enlisted members. Enlisted members may come from the same unit as the accused but may not be junior in rank to the accused. The convening authority may not detail enlisted members to a case where the accused is a commissioned officer or cadet. **(T-0).**

14.3. Detailing Reserve Members on Active Duty. For courts-martial involving Reservists, convening authorities should consider detailing Reserve members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502.

14.4. Advice to the Convening Authority. The SJA must guard against unlawful command influence in the court member selection process, which includes ensuring no involvement by trial counsel or assistant trial counsel in the identification of prospective court members. When advising the convening authority on court member detailing, the SJA reiterates the Article 25(e)(2), UCMJ, criteria. The SJA may prepare a list of proposed nominees. If such a list is used, the SJA also informs the convening authority that persons on the nomination list as well as any other eligible persons subject to their command or others made available by their commanders may be considered. The SJA maintains all documents submitted to the convening authority in the course of detailing members to a court-martial.

14.4.1. Diversity. Article 25, UCMJ, does not preclude a commander from taking gender or race into account if he or she is seeking in good faith to assure that the court-martial panel is representative of the Accused's race or gender, or of the military population as a whole. However, the SJA should ensure a review of relevant case law is provided to guard against improper panel stacking. See *United States v. Riesbeck*, 77 M.J. 154 (CAAF 2018).

14.5. Panel Requirements. Convening authorities should detail a sufficient number of members so that, after exercise of challenges, a capital case will be comprised of twelve voting members, a non-capital general court-martial will be comprised of eight voting members, and a special court-martial will be comprised of four voting members. **Note:** If the number of members in a non-capital general court-martial is reduced after impanelment, the trial may proceed so long as at least six members remain. See Article 29, UCMJ.

14.6. Alternate Members. The convening authority must state, in writing, whether or not alternate members are authorized. If the convening authority authorizes impanelment of alternate members, the convening authority must either specify a number of alternate members or authorize the military judge to impanel alternates only if excess members remain after exercise of challenges. **(T-0).** See R.C.M. 912A. Templates are located on the VMJD.

14.6.1. If the convening authority designates a specified number, the military judge must impanel that number of alternates in addition to the primary members on the fixed panel. Therefore, if after challenges there is an insufficient number of alternate members, the convening authority must detail additional members to the panel until the specified number of alternates are seated on the panel.

14.6.2. If the convening authority states that alternates may be impaneled only if excess members remain, the military judge shall impanel remaining members as alternates, but no more than three. If no excess members remain after challenges, then the convening authority is not required to detail additional members to serve as alternates.

14.7. Accused's Elections. An enlisted accused may request to be tried by a court-martial panel with no further specificity, or that a court-martial panel be comprised entirely of officer members or at least one-third enlisted members.

14.7.1. **Officer Panel Election.** If the accused requests a panel entirely of officer members, and the convening authority previously detailed enlisted members, then the convening authority must excuse the previously detailed enlisted members.

14.7.2. **At Least One-Third Enlisted Panel Election.** If the accused requests at least one-third enlisted members and officer members were already detailed, the convening authority may replace officer members with enlisted members or may detail enlisted members without excusing officer members. If the convening authority previously detailed a sufficient number of enlisted members, then there may be no need to replace or detail new members.

14.8. Replacing or Excusing Detailed Members (R.C.M. 505). Before the court-martial is assembled, the convening authority may excuse or replace detailed members of a court-martial without showing cause. The convening authority may delegate to the servicing SJA or other principal assistant the authority to excuse detailed members of a court-martial before a court is assembled. Any such delegation must be in writing. However, the SJA or other principal assistant may excuse no more than one-third of the detailed members. Only the convening authority may detail new members to a court-martial panel. See R.C.M. 505(c).

Section 14B—Preparing the Convening Order

14.9. Special Order Convening Courts-Martial. Convening orders are prepared in accordance with R.C.M. 504, 1302, and this chapter and shall designate the type of court-martial and detail the members, if any, in accordance with R.C.M. 503(a). A convening order may designate where the court-martial will meet based as determined by the convening authority. A sample convening order is provided on the VMJD.

14.9.1. **Authority Cited in Convening Order.** The current Department of the Air Force Special Order or Designation Memorandum (i.e., the “Worldwide Convening Order” or “Worldwide Convening Authority Designation Memorandum), or other document authorizing the commander to convene courts is cited as authority for convening the court-martial.

14.9.2. **Amendments.** Convening orders may be amended. A sample amended convening order is provided on the VMJD. The original order should be amended to reflect changes in court members, except when members are excused without replacement. If excusal of a member without replacement is not reduced to writing, the military judge or trial counsel announces the excusal on the record. No more than two amendments to the original order may

be issued. If it is necessary to further amend the convening order, a new order should be published with a savings clause that transfers all cases in which the court has not yet been assembled to the new order. A sample order with a savings clause is included on the VMJD. All amendments to a convening order and all convening orders with a savings clause should cite all prior orders. Copies of all convening orders and amendments to convening orders must be provided to the military judge and included in all copies of the ROT.

14.9.3. Numbering Convening Orders. Orders convening courts-martial are special orders that are numbered consecutively on a fiscal year basis, starting with number 1. The number follows an A-series letter prefix. Use an A letter prefix for general courts-martial, an AB letter prefix for special courts-martial, an AC letter prefix for summary courts-martial, and an AD letter prefix for special courts-martial by military judge alone under Article 16(c)(2), UCMJ. The convening order must be memorialized in the convening order log as noted in [Section 28A](#).

14.9.4. Identification of Members. Special orders convening a court-martial must contain the name, rank and unit of all persons detailed. Do not include personal information (e.g., SSN). If a detailed member is not under the command of the convening authority, ensure the special order clearly indicates that the member was detailed with the concurrence of the member's commander.

14.9.5. If the convening authority directs the military judge to appoint alternates, it must be so annotated on the convening order. A sample convening order including the authorization to impanel alternates is located on the VMJD.

14.9.6. If the convening authority convenes a special court-martial by military judge alone, it must be so annotated on the convening order. A sample convening order is located on the VMJD.

14.10. Docketing. JAT is responsible for docketing procedures, which are described in the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

Chapter 15

COURT-MARTIAL COMPOSITION AND COURT REPORTERS

Section 15A—Military Judges (R.C.M. 503(b))

15.1. Detailing Military Judges. The Chief Trial Judge, TJAG's designee for detail of military judges, details military judges to SPCMs and GCMs. The Chief Trial Judge may delegate this authority to any person assigned as a DAF military judge. A military judge with the authority to detail military judges may detail himself or herself to a court-martial. Orders detailing military judges may be oral or written. Any written orders are included in the ROT. The authority who detailed the military judge is announced on the record.

15.1.1. A military judge from another U.S. Armed Force may be detailed to a DAF court-martial according to the other Armed Force's regulations applicable to military judges and with the approval of TJAG.

15.1.2. TJAG has authority to make DAF military judges available for detail to trials convened by another U.S. Armed Force.

15.1.3. No judge may be detailed to a court-martial when that judge has previously acted as a PHO at a preliminary hearing. Military judges are requested and detailed to the pre-referral proceedings described in this chapter in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

Section 15B—Counsel (R.C.M. 503(c)).

15.2. Detailing of Defense Counsel.

15.2.1. The Chief, JAJD, has the authority to detail a CCDC, CDC, or ADC to any court-martial, and may delegate such authority.

15.2.1.1. A CDC may detail an ADC within that circuit to a court-martial outside of that circuit, with the concurrence of the Chief, JAJD, or a CCDC.

15.2.1.2. Military defense counsel will announce on the record by whom they were detailed.

15.3. Detailing of Trial Counsel.

15.3.1. An SJA, Circuit DTO, Circuit Trial Counsel, or the Chief or DTO, JAJG, may detail trial counsel or assistant trial counsel to a court-martial. The order detailing trial counsel may be oral or written. Announce orders detailing counsel orally on the record at trial. Attach written or message orders, if any, to the ROT.

15.3.2. R.C.M. 503(c)(3) and other Armed Forces' regulations govern detailing counsel from other Armed Forces to DAF courts-martial. The Chief, JAJM, is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to JAJD, available for detail to trials convened by another Armed Force. JAJD exercises this authority over defense counsel.

15.4. Qualifications of Counsel.

15.4.1. General Courts-Martial. Only attorneys certified according to Article 27(b), UCMJ, may be detailed as trial counsel, defense counsel, or assistant defense counsel for a general court-martial. Any person detailed as assistant trial counsel must be designated as a judge advocate in accordance with AFI 51-101, *The Air Force Judge Advocate General's Corps (AFJAGC) Operations, Accessions, and Professional Development*.

15.4.2. Special Court-Martial. Only attorneys certified according to Article 27(b), UCMJ, and AFI 51-101 may be detailed as defense counsel or assistant defense counsel for a special court-martial. Any person detailed as trial counsel or assistant trial counsel for a SPCM must be designated as a judge advocate under AFI 51-101 in order to be competent for purposes of Article 27(c)(2), UCMJ.

15.4.3. Capital Cases. Where possible, in capital cases at least one defense counsel should have knowledge and/or experience in capital litigation. See Article 27(d), UCMJ. The Chief, JAJD will continue to identify capital litigation training opportunities for defense counsel.

15.4.4. ARC Members. See [Chapter 3](#) for ARC-specific requirements.

15.4.5. Civilian Counsel (R.C.M. 502(d)(2)(b)). When a civilian counsel represents an accused at a court-martial, the counsel's qualifications to serve as defense counsel, including information about the counsel's bar membership and standing, should be included in the record. Ordinarily, the military judge will have the civilian counsel announce their qualifications on the record during court-martial proceedings.

15.5. Disqualifications (Articles 26(d) and 27(a)(2), UCMJ; R.C.M. 502(d)(43)).

15.5.1. A PHO who conducted an Article 32, UCMJ, preliminary hearing may never serve as a member of the prosecution or as military judge in the same case.

15.5.2. No person who, with respect to a case, has served as a PHO, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

15.6. Request for IMDC (R.C.M. 502(d)(2)(B) and 506(b)). An accused may request representation by IMDC for any administrative discharge board proceeding, court of inquiry, Article 32, UCMJ, preliminary hearing, and/or at a court-martial. The requested counsel represents the accused, if reasonably available.

15.6.1. Format of IMDC Requests. An IMDC request must be in writing and signed by the accused or detailed counsel. The request shall include the following, as applicable:

15.6.1.1. The date of the discharge board, Article 32, UCMJ preliminary hearing or trial;

15.6.1.2. Any special qualifications of the requested counsel relevant to the case;

15.6.1.3. Whether the accused is represented by other counsel (not the requested counsel) and, if so, the name of that counsel;

15.6.1.4. Whether the accused has entered into an attorney-client relationship with the requested counsel concerning the charges being investigated or tried (including any statement required by [paragraph 15.6.4](#));

15.6.1.5. In the case of a requested counsel presently unavailable, whether the counsel is expected to be available before the discharge board, Article 32, UCMJ, preliminary hearing, or trial; and,

15.6.1.6. A statement acknowledging the accused's understanding that, if the IMDC request is granted, detailed defense counsel may be excused from further participation in the case at the sole discretion of the detailing authority.

15.6.2. Non-Availability of Certain Counsel. In addition to those persons listed in R.C.M. 506(b)(1), the following persons are not ordinarily reasonably available to serve as IMDC because of the nature of their duties, positions, or geographic locations:

15.6.2.1. Medical Law Consultants and Advisors;

15.6.2.2. Attorneys in the National Capital Region assigned to JAJ, JAC, JAO, or subordinate divisions, excluding any individual detailed to perform duties as a Circuit Defense Counsel or Area Defense Counsel;

15.6.2.3. Attorneys attending an Air Force Institute of Technology sponsored program such as a Master of Laws program;

15.6.2.4. Attorneys assigned or attached to the OSI;

15.6.2.5. Attorneys detailed to perform duties as a CTC, detailed trial counsel, and assistant trial counsel in the same or an allied case;

15.6.2.6. ARC attorneys not on extended Title 10 active duty tours. See [Chapter 3](#) for additional guidance.

15.6.2.7. SJAs, and for legal offices responsible for advising commands having a GCMCA, DSJAs.

15.6.3. Reasonably Available. A counsel is "reasonably available" if not considered unavailable by the terms of the MCM or this instruction, and the appropriate approval authority determines if the requested counsel can perform the duties of an IMDC without unreasonable expense or detriment to the United States and without unreasonable delay in the proceedings. In determining the reasonable availability of a counsel, the approval authority may consider the following:

15.6.3.1. The duties, workload, and assignment status of the requested counsel;

15.6.3.2. The experience level, duties, and workload of the military counsel already detailed to represent the accused;

15.6.3.3. The nature and complexity of the charges and legal issues involved in the case;

15.6.3.4. Whether a certified assistant trial counsel is detailed to the case;

15.6.3.5. The workload of the office to which the requested counsel is assigned, and the availability of personnel to meet those demands;

15.6.3.6. The distance from the expected site of the proceedings; and

15.6.3.7. Whether requested counsel is likely to be a necessary witness at trial or is otherwise conflicted from representing the accused under the DAF Rules of Professional Conduct or DAF Standards for Criminal Justice.

15.6.4. Exception to Non-Availability: Existing Attorney-Client Relationship. When an attorney-client relationship exists, as determined by the approval authority, exceptions to non-availability based upon assignment to a position identified in R.C.M. 506(b)(1) and [paragraph 15.6.2](#) should ordinarily be granted. An attorney-client relationship exists when, at the time of the accused's IMDC request, the accused and the requested attorney had a bilateral understanding as to the nature of services to be provided in the case, and the requested attorney was actively engaged in the preparation and pretrial strategy of the case. *United States v. Spriggs*, 52 M.J. 235 (CAAF 2000). A statement, signed by the requested attorney and accused, asserting the attorney-client relationship and providing an overview of the relationship must accompany the request. See [paragraph 15.6.1.4](#).

15.6.5. Processing IMDC Requests for ADC and CDC.

15.6.5.1. IMDC requests for ADC and CDC are forwarded through defense channels to the appropriate approval authority as follows:

15.6.5.2. The Chief, JAJD, has the authority to act on any IMDC request for any CCDC, CDC, or ADC, and may delegate such authority.

15.6.5.3. If the Chief, JAJD chooses to delegate such authority, an accused may appeal the disapproval of an IMDC request to the Chief, JAJD, whose decision is final. There is no appeal from an IMDC request disapproved by the Chief, JAJD.

15.6.6. Processing IMDC Requests for Other Counsel. IMDC requests for all other counsel (not addressed in [paragraph 15.6.4](#) and [paragraph 15.6.5](#)) are forwarded to the convening authority through the trial counsel, if any. See R.C.M. 506(b)(2). Because JAJD is responsible for defense services throughout the Air Force and Space Force, it is incumbent upon those IMDC who are not assigned to JAJD to notify the Chief, JAJD, of their association with a case as soon as practicable. These IMDC should also keep CCDC informed about the progress of the case. Additionally, the IMDC must coordinate in advance any anticipated expenditure of JAJD funds for travel or other reasons.

15.6.6.1. **Disposition When Counsel is Not Reasonably Available.** If the requested counsel is not reasonably available for a reason identified in R.C.M. 506(b)(1) or [paragraph 15.6.2](#), and the accused does not assert an attorney-client relationship, the convening authority will deny the request and notify the accused.

15.6.6.2. **Disposition When Counsel May Be Available.** If the requested counsel appears to be reasonably available (i.e., not apparently unavailable in accordance with R.C.M. 506(b)(1) or [paragraph 15.6.2](#)), the convening authority forwards the request to the appropriate approving authority identified below. The approving authority evaluates availability (see [paragraph 15.6.3](#)), decides whether to grant the request, and informs the forwarding convening authority of the decision and the reasons for the decision. The convening authority notifies the accused of the decision.

15.6.6.2.1. **Attorneys Assigned to Headquarters Department of the Air Force.** Send requests for attorneys assigned to JAC, JAJ, JAQ, JAO, JAS, AFJAGS, or HAF

Directorates to the respective Director. Requests for ADC and CDC shall be forwarded per **paragraph 15.6.5**.

15.6.6.2.2. Master of Laws Students. Send requests for attorneys in a Master of Laws program to JAX.

15.6.6.2.3. SJAs. Send requests for SJAs to the SJA's commander.

15.6.6.2.4. All Others. Send requests for all other attorneys to the requested counsel's SJA, supervising officer, or commander.

15.6.7. **Appeals.** The accused may request review of a disapproved IMDC request (other than those covered by **paragraph 15.6.5**) by the next higher level of supervision of the officer who denied the request. Appeals are forwarded to the convening authority through the trial counsel.

15.6.7.1. If the convening authority originally denied the request, and declines to grant the request on appeal, the appeal is forwarded to the convening authority's superior officer for review and decision. The final decision is returned to the convening authority, who notifies the accused. There is no appeal from an IMDC request initially disapproved by a MAJCOM or FLDCOM commander or higher authority.

15.6.7.2. With the exception of attorneys assigned to JAJD, if an approval authority originally denied the request, the appeal is forwarded by the convening authority to that approval authority. If the approval authority declines to grant the request on appeal, the appeal is forwarded to the approval authority's superior officer for review and decision. DJAG reviews denials by Headquarters DAF Directorates. There is no further review of denials by DJAG. The final decision is returned to the convening authority, who notifies the accused of the decision.

15.6.7.3. A military judge may, for good cause, determine that a particular IMDC is reasonably available, notwithstanding any provision of this instruction.

Section 15C—Oaths (Article 136, UCMJ; R.C.M. 807)

15.7. One-Time Oath. The following personnel take a one-time oath: military judges certified according to Article 26(b), UCMJ; military counsel, certified according to Article 27(b), UCMJ; and court reporters.

15.7.1. Any person authorized by Article 136, UCMJ, may administer the one-time oath. The person administering the oath completes a certificate indicating the place and date the oath was administered. The oath contains the typed name, signature, and qualifications of the person administering the oath. Give a copy to the person taking the oath.

15.7.2. For military judges, send the original and one copy to JAX. Use the following oath: "I (name of military judge), do (swear) (affirm) that I will faithfully and impartially perform the duties of military judge in any proceeding under the UCMJ to which I am detailed to perform such duties, (so help me God)."

15.7.3. For military counsel, the SJA or designee should ensure the original and one copy is sent to JAX. The following oath is used: "I [name of military counsel], do (swear) (affirm) that I will faithfully perform the duties of counsel in any proceeding under the UCMJ to which

I am detailed to perform such duties or in any court-martial in which I am to perform duties of individual defense counsel, (so help me God).”

15.7.4. For court reporters, the SJA or designee should give the original to the reporter and file one copy in the office where the individual is assigned. If the individual transfers to another DAF legal office, the SJA should forward a copy of the oath to the receiving SJA. Use the following oath: “I (name of reporter), do (swear) (affirm) that I will faithfully perform the duties of (reporter) in any proceeding under the UCMJ to which I am detailed, (so help me God).”

15.8. Uncertified Military Counsel and Civilian Defense Counsel. Military counsel not certified according to Article 27(b), UCMJ, and civilian defense counsel are sworn for each court-martial. In a GCM or SPCM, the military judge administers the oath. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding.

15.9. Court Members. Court members are sworn for each court-martial to which they are detailed. The trial counsel administers the oath. See R.C.M. 807.

15.10. Interpreters. In a general court-martial or special court-martial, the trial counsel or military judge administers an oath to the interpreter. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding. An interpreter is properly sworn after an affirmative response to the following oath: “Do you, [name of interpreter], (swear) (affirm) that you will faithfully perform the duties of interpreter in this proceeding, (so help you God)?”

Section 15D—Court Reporters

15.11. Court Reporter Duties. Court reporters are detailed in accordance with JAT guidance to all GCMs and SPCMs.

15.12. Transcription Requirements. See DAFMAN 51-203 for transcription requirements for Article 30(a), UCMJ, proceedings and courts-martial.

Chapter 16

PRE-TRIAL MATTERS

Section 16A—Changes to and Withdrawal of Charges and/or Specifications

16.1. Changes to Charges or Specifications. Changes may be made to charges or specifications after referral as authorized and explained in R.C.M. 603. Changes should be made by lining through the charges or specifications in whole or in part, or writing in additional language while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel. Major changes are made only with the permission of the convening authority. This permission does not need to be in writing. Do not use white-out tape or liquid for any changes to the charge sheet.

16.1.1. Minor Changes. Minor changes may be accomplished without having the charge sworn anew by the accuser. Trial counsel shall provide the accused and defense counsel with copies of the charge sheet with the changes. After arraignment, only a military judge may authorize minor changes to the charge sheet. R.C.M. 603(a) and its accompanying Discussion provides a definition of a “minor change.”

16.1.2. Major Changes. Major changes or amendments to a referred charge or specification may not be made over the objection of the accused. If such changes need to be made the charge(s) and specification(s) must be withdrawn and referred anew. In the case of a GCM, a new Article 32, UCMJ, preliminary hearing may be required if the charge(s) or specification(s), as changed, were not covered in the prior preliminary hearing. See R.C.M. 603(d). If a charge is withdrawn and amended, follow the re-referral procedures outlined in [paragraph 13.9](#).

16.1.2.1. Even if an accused does not object to a major change or amendment to a referred charge or specification, it may be prudent to prefer anew.

16.1.2.2. New preferral and referral may avoid a jurisdictional issue as to whether the accused was improperly tried for a charge never referred to trial by the convening authority in an actual order or functional equivalent. *United States v. Wilkins*, 29 M.J. 421 (C.M.A. 1990).

16.2. Withdrawal of Charges or Specifications. Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. R.C.M. 604. Withdrawal of charges or specifications extinguishes the jurisdiction of a court-martial over them, unlike a dismissal that extinguishes the charges themselves. Withdrawn charges or specifications must be disposed of (e.g., dismissed, re-referred to another court-martial, or forwarded to another convening authority for disposition). An officer authorized to sign referrals or trial counsel may withdraw charges or specifications at the direction of the convening authority. **Note:** If a discharge, resignation, or retirement in lieu of court-martial is approved, any pending charges must be withdrawn and dismissed.

16.2.1. Complete Withdrawal. To withdraw all charges and specifications from a court-martial, trial counsel should “Z-out” the referral section (Part V) of the charge sheet, specify the disposition and the date, and initial the action taken (e.g., “Withdrawn on 28 Aug 20, [initials]”). If the convening authority or a superior competent authority directs both

withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed on 28 Aug 20, [initials]”).

16.2.2. Partial Withdrawal. To withdraw a specific charge or specification from a court-martial, while allowing the other offense(s) to proceed to trial, trial counsel should “Z” out the charge and specification and annotate the dismissal date and the initials of the person who lined through the affected charge or specification. Specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 18 Jan 20, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, both actions should be reflected accordingly (e.g., “Withdrawn and Dismissed on 18 Jan 20, [initials]”). The trial counsel determines whether any remaining charges and/or specifications should be renumbered (and if renumbered, initials the renumbering). The following rules apply to renumbering charges and/or specifications:

16.2.2.1. When charges or specifications are withdrawn before arraignment, trial counsel ensures the remaining charges or specifications are renumbered and the new numbers reflected on the charge sheet and throughout the ROT.

16.2.2.2. When charges or specifications are withdrawn after arraignment but before the court members are aware of the charges, the military judge directs whether the remaining charges or specifications are renumbered.

16.2.2.2.1. If the military judge directs renumbering, the new numbers should be reflected on the charge sheet and referred to throughout the ROT from the point of renumbering. Withdrawn charges or specifications should not be brought to the attention of the members.

16.2.2.2.2. If the military judge does not direct renumbering, the remaining charges or specifications should not be renumbered and the military judge instructs the members that they should not draw any inference from the numbering of the charges and/or specifications.

16.2.2.3. When charges or specifications are withdrawn after arraignment and after they have come to the attention of court members (or the military judge sitting alone), the remaining charges or specifications ordinarily are not renumbered. The military judge instructs the members that the withdrawn charges or specifications should not be considered for any reason.

16.2.3. Notification to the Accused. If charges are withdrawn and dismissed, the trial counsel must notify the accused, through the accused’s counsel, of such withdrawal and dismissal.

Section 16B—Evidentiary Matters

16.3. Warrants of Attachment. A warrant of attachment directs law enforcement personnel to seize a person or property, without consent, and deliver the person or property to the military judge or court-martial.

16.3.1. Requirements for a Warrant of Attachment. A Warrant of Attachment may be issued only if in compliance with the provisions set out in R.C.M. 703.

16.3.2. Processing a Warrant of Attachment.

16.3.2.1. In most cases, a Warrant of Attachment should be executed by the United States Marshals Service. Otherwise, anyone 18 years or older may execute a Warrant of Attachment. Military law enforcement may execute a Warrant of Attachment; however, military law enforcement should only be considered a last resort.

16.3.2.2. Provide the United States Marshals Service with the following:

16.3.2.2.1. A copy of the Warrant of Attachment;

16.3.2.2.2. A copy of the subpoena;

16.3.2.2.3. A copy of the certificate of service or receipt;

16.3.2.2.4. An affidavit indicating that appropriate fees and mileage were tendered to the witness where applicable, or that the witness was provided a means for reimbursement for fees and mileage, and the dollar amount;

16.3.2.2.5. The reasons that witness is material and why it is believed the witness refuses or willfully neglects to appear; and

16.3.2.2.6. A Military Interdepartmental Purchase Request number. Legal office personnel should consult with their local finance office to obtain this information.

16.3.2.3. The General Counsel's Office for the United States Marshals Service will review the Warrant of Attachment and determine the appropriate executing office. As this process can take some time, trial counsel or the Government representative may consider requesting relief pursuant to R.C.M. 707(c) if applicable.

16.3.2.4. If the United States Marshals Service is executing the Warrant of Attachment, it will make travel, lodging, and housing arrangements for the escorts and witness as appropriate. If the United States Marshals Service is not executing the Warrant of Attachment, the Government is responsible for making travel, lodging and housing arrangements for the escorts and witness. See DAFI 51-207 for further guidance regarding witness escorts, funding, and housing.

16.3.2.5. Only such non-deadly force as is necessary to bring the witness to the proceeding is authorized.

16.3.2.6. A convening authority may only issue a Warrant of Attachment to compel compliance with an investigative subpoena issued prior to referral. R.C.M. 703(g)(3)(H)(i) and Discussion. Military judges may also issue Warrants of Attachment as appropriate including when detailed under Article 30a, UCMJ.

16.4. Depositions.

16.4.1. Requesting and Ordering a Deposition. If it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial, government or defense counsel may request the convening authority order a deposition pursuant to R.C.M. 702(a).

16.4.1.1. The convening authority determines whether the requesting party has demonstrated that, because of exceptional circumstances and in the interest of justice, the testimony must be taken and preserved for use at trial. See R.C.M. 702(a). If the request is made after referral, either the military judge or convening authority may act upon it. A

victim's declination to testify at a preliminary hearing pursuant to Article 32(d)(3), UCMJ, or declination to submit to pretrial interviews shall not, by itself, be considered exceptional circumstances. See R.C.M. 702(a)(3).

16.4.1.2. When ordering a deposition, the convening authority details a deposition officer with the qualifications set forth in R.C.M. 702(d)(3)(A). A sample appointment memorandum is provided on the VMJD. The duties of the deposition officer are described in R.C.M. 702(e).

16.4.1.3. If the deposition is taken by agreement of both trial and defense counsel, the convening authority is not required to produce an order, but must still detail a deposition officer.

16.4.2. Counsel for Depositions. The rules governing qualification of counsel who may perform duties before courts-martial apply to counsel representing the parties at a deposition. The deposition should affirmatively indicate the qualifications of counsel.

16.4.3. Recording and Authentication of Depositions.

16.4.3.1. Written Depositions. Depositions taken on written interrogatories are recorded and authenticated using a DD Form 456, *Interrogatories and Depositions*. DD Form 456 is not used for oral depositions.

16.4.3.2. Oral Depositions. Oral depositions are conducted in accordance with the procedures in R.C.M. 702(g)(1) and DAFMAN 51-203. Formats for conducting, transcribing, and certifying oral depositions may be found in DAFMAN 51-203. The deposition officer is the custodian for the record of deposition.

16.5. Subpoena Limitations.

16.5.1. A civilian witness may not be subpoenaed to testify at a court-martial outside the United States or at a proceeding pre-referral (Article 30a, UCMJ or Article 32, UCMJ hearings).

16.5.2. Subpoenas to the Media. DAF policy requires the exercise of due care when issuing subpoenas to media organizations to avoid unnecessary imposition on the news gathering process and thereby protect the media's First Amendment role.

16.5.2.1. Prior to issuing a subpoena to a member of the news media, trial counsel will consult with the base-level SJA. The SJA forwards a request to the GCMCA's SJA addressing the following:

16.5.2.1.1. That all reasonable attempts were made to obtain the information sought from alternative sources;

16.5.2.1.2. That all reasonable alternative investigative steps were taken to obtain the information sought;

16.5.2.1.3. The results of negotiations with the media. Negotiations should make clear the government's needs in the particular case and its willingness to respond to particular concerns of the media;

16.5.2.1.4. That reasonable grounds exist to conclude, based on information obtained from other sources, that a crime has occurred and the information sought is essential to the case; and

16.5.2.1.5. That to the extent possible, the subpoena is directed at material information regarding a limited subject matter, will cover a reasonably limited period of time, and will avoid requiring production of a large volume of unpublished material.

16.5.2.2. The GCMCA's SJA approves or disapproves the issuance of the subpoena. The base-level SJA immediately files a SIR in accordance with **Chapter 31** of this instruction.

16.5.2.3. In the event exigent circumstances prevent prior consultation with the GCMCA's SJA, a trial counsel may issue a subpoena with the base-level SJA's approval. In that case, the base-level SJA immediately informs the GCMCA's SJA, MAJCOM SJA, and JAJM by email of the issuance of the subpoena and the exigent circumstances that precluded prior consultation.

16.5.2.4. The principles set forth in this guidance are not intended to create or recognize any legally enforceable right in any person.

Section 16C—Child Pornography Evidence and Exhibits

16.6. Distinction between Evidence and Exhibits. Evidence is retained by law enforcement. Exhibits are retained by the court. Child pornography seized and maintained by OSI as evidence of the crime is retained by OSI or other responsible law enforcement. Child pornography admitted as an exhibit at trial is separate and distinct from evidence seized and retained by law enforcement; such exhibits often consist of a forensic copy of the original evidence seized and retained by law enforcement. Child pornography admitted as exhibits in a court-martial are the property and responsibility of the court-martial (i.e., the court reporter and/or servicing legal office, depending on who is tasked with maintaining admitted exhibits while the ROT is being prepared and ultimately maintained in accordance with the Air Force Records Disposition Schedule located in AFRIMS. See 18 U.S.C. § 3509. Absent a written, advance agreement between the legal office and servicing OSI detachment, admitted exhibits shall not be transferred back to OSI for "safekeeping."

Section 16D—Defense Investigative Support

16.7. Defense Investigative Capability.

16.7.1. The Defense Investigative Capability provides direct investigative and litigation support to detailed defense counsel in a wide range of potential adverse actions. When detailed to the defense team, a defense investigator (DI) is a "lawyer's representative" within the meaning of M.R.E. 502, and works at the direction of the detailed military defense counsel on behalf of the client.

16.7.2. The Chief, JAJD, is responsible for providing defense investigatory capabilities to DAF defense counsel.

16.7.3. Chief Circuit Defense Counsel (CCDC) are responsible for detailing DIs to individual cases. The CCDC may delegate detailing authority to a supervising defense investigator. The detailing decision is protected work product insofar as it is based on privileged input from

defense counsel regarding each case's likely disposition, status of discovery, potential conflicts, investigative needs, potential case theories and strategies, etc. There is no appeal of a CCDC's decision whether or not to detail a DI to a particular case; nor is the decision subject to review by a military judge. The CCDC's decision to detail, or not detail, a DI to a particular case does not impede a detailed military defense counsel from requesting additional/alternative investigative support from the convening authority per **paragraph 16.8**.

16.7.4. Once detailed, the investigative activities of a DI will be in support of the military defense counsel detailed to the case. As a member of the defense team, the DI must abide by the attorney-client and work product privileges. The efforts of the DI are work-product. See M.R.E. 502 and R.C.M. 701(f).

16.8. Defense Requests for Investigative Support from OSI.

16.8.1. If a DC representing a DAF member requests investigative support from outside JAJD, such requests are made in writing to the servicing SJA, who forwards the request along with a recommendation to the convening authority. The SJA may consider whether DC has made a sufficient case as to why investigative support is needed as well as whether DC has first requested support from JAJD in making the recommendation to the convening authority. If the convening authority grants the request and investigative resources are available within the convening authority's command that would satisfy the needs of the defense, other than OSI investigators, the convening authority appoints an investigator.

16.8.2. If the convening authority determines that other investigative resources are not available and appointment of an OSI special agent is necessary under the circumstances, the convening authority informs the local OSI detachment commander. The OSI detachment commander forwards the request through command channels for a determination of whether or not OSI investigative resources exist to support the defense request. If OSI/CC agrees that appointment of a special agent is appropriate and an agent is available, OSI/CC appoints a special agent. OSI/CC is the decision authority for appointment of OSI agents as defense investigators, except in the extraordinary case where a trial judge specifically mandates the appointment of an OSI special agent. In all cases, the convening authority provides the requisite funding. See also *United States v. Pomarleau*, 57 M.J. 351 (CAAF 2002).

16.8.3. Contact OSI/JA with any questions regarding this policy or its application, including provisions that apply to permissible activities, access to law enforcement resources, and level of assistance which may be provided by special agents who are assigned to provide defense investigative support.

Chapter 17

PLEA AGREEMENTS AND CONDITIONAL GUILTY PLEAS

Section 17A—Conditional Guilty Plea

17.1. Conditional Guilty Plea. When approving a guilty plea conditioned on preserving review of an adverse determination of a pretrial motion, the military judge should make the following findings on the record: (1) the offer is in writing and clearly details the motion that the accused wishes to preserve on appeal; (2) the government’s consent is in writing and signed by an official authorized to consent; (3) the particular motion was fully litigated before the military judge; and (4) the motion is case dispositive. See R.C.M. 910(a)(2); *United States v. Monroe*, 50 M.J. 550 (AFCCA 1999); and *United States v. Phillips*, 32 M.J. 955 (A.F.C.M.R. 1991). The SJA, person “Acting as the Staff Judge Advocate” to the convening authority, or the trial counsel at the direction of the SJA is authorized to consent for the government to the accused entering a conditional guilty plea.

Section 17B—Plea Agreements (Article 53a, UCMJ, R.C.M. 705, and R.C.M. 910)

17.2. General Provision. Plea agreements may only be used in cases where all offenses occurred on or after 1 January 2019 or if the accused opts in to MJA 16 sentencing framework. If all offenses occurred prior to 1 January 2019, a Pre-Trial Agreement (PTA) must be used. For cases where at least one offense occurred prior to 1 January 2019 and at least one offense occurred on or after 1 January 2019, either: (1) apply the pre-MJA16 sentencing rules to the entire case and use a PTA; (2) separate the case into two proceedings, one for pre-1 January 2019 offenses (with a PTA) and one for on or after 1 January 2019 offenses (with a plea agreement); or (3) the Accused may opt into the MJA16 sentencing rules and use a plea agreement.

17.3. Policy Considerations. SJAs have an obligation to preserve a military justice system that promotes good order and discipline and is fair, timely, and transparent to the military community and the public at large. SJAs should therefore be able to articulate to the convening authority the benefits to the government and the accused as well as the costs to the military justice system of entering an agreement in order to properly balance the considerations. Such agreements should not be used to mask case-processing inefficiencies.

17.3.1. The use of a plea agreement may be advisable in the following situations:

17.3.1.1. Cases where the victim has indicated support for the plea agreement, though a victim’s preference is not binding.

17.3.1.2. Cases where sensational information involving persons other than the accused can be avoided through a negotiated plea.

17.3.1.3. Cases where several accused are involved, and the testimony of one is required in the trial of one or more of the others. In this case, a plea agreement may be more desirable than a grant of immunity.

17.3.1.4. Cases where essential witnesses are located at exceptional distances, are not amenable to process or are not otherwise available. Current operations, in some circumstances, may make critical witnesses unavailable.

17.3.1.5. Cases involving national security where harm to the government of a fully litigated trial should be avoided. In these cases, plea agreements can be used so that evidence involving exposure of national security information can be protected.

17.3.2. Cost, expediency, collateral consequences, forum selection, and litigation risk are all factors the SJA and the convening authority should consider in determining whether a plea agreement is warranted. However, individually they are not ordinarily factors that outweigh possible detrimental aspects of plea agreements.

17.3.3. Plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met. For example, when an accused enters a no-pay status upon the expiration of their term of service (or expiration of his/her Title 10 federal active duty orders, in the case of ARC members), there will be no pay available to forfeit, and therefore, no amount to waive for the benefit of dependents. An agreement predicated upon terms including a waiver that is thwarted due to no pay entitlement may render pleas by an accused improvident and result in reversal of a conviction. *United States v. Mitchell*, 58 M.J. 251 (CAAF 2003); *United States v. Perron*, 58 M.J. 78 (CAAF 2003).

17.3.4. **Defense Offer.** Although discussions about plea agreements or alternate disposition agreements may occur at any time in the trial process and may be initiated by trial counsel or defense counsel, ordinarily, the initial written offer will be provided by the defense. The SJA, trial counsel and counsel for the accused may clarify the terms of a defense offer to obtain sufficient information to enable the convening authority to decide whether to accept or reject the offer.

17.4. Plea Agreements in National Security and Related Cases.

17.4.1. The SJA must obtain permission from the Chief, JAJM to enter into plea agreement discussions in cases involving an offense (including attempt, conspiracy, and solicitation to commit such an offense) of espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive rules or regulations and criminal statutes concerning classified information or the foreign relations of the United States. JAJM ensures coordination with the Department of Justice according to DoDI 5525.07. JAJM permission is not required for the convening authority to reject a plea agreement offer.

17.4.2. **Request for Permission to Negotiate.** The GCMCA personally or through the SJA requests by the most expeditious means available permission from JAJM to negotiate a plea agreement. The following information should be included in the request:

- 17.4.2.1. Background information on the accused including name, rank, and organization;
- 17.4.2.2. The offenses charged;
- 17.4.2.3. A summary of evidence against the accused;
- 17.4.2.4. Terms of the accused's plea agreement offer; and,
- 17.4.2.5. Factors warranting a plea agreement.

17.4.3. **Permission to Proceed.** A grant of permission to enter into plea agreement discussions does not amount to approval of the terms or conditions of any plea agreement, which may result from the negotiations.

17.5. Authority to Approve a Plea Agreement. The decision to accept or reject a plea agreement offer submitted by an accused is within the sole discretion of the convening authority that referred the case to trial. *United States v. Caruth*, 6 M.J. 184 (C.M.A. 1979). The accused is entitled to have the convening authority personally act upon the offer before trial. *United States v. Upchurch*, 23 M.J. 501 (A.F.C.M.R. 1986). A convening authority, through the servicing SJA, must provide the victim(s), their Article 6b, UCMJ, representative and/or counsel, if applicable, an opportunity to submit views before accepting the plea agreement offer. **(T-0)**. See R.C.M. 705(e)(3)(B) and DAFI 51-207.

17.6. Plea Agreement Terms (R.C.M. 705(b)-(d)).

17.6.1. Accused Opt-in to MJA 16 Sentencing Rules. In straddling cases (at least one offense prior to 1 January 2019 and at least one offense on or after 1 January 2019), the accused can agree to opt in to MJA 16 sentencing rules as a term of the plea agreement.

17.6.2. Sentencing Range. The parties can agree to a limit on the maximum and minimum amount of punishment. See R.C.M. 705(d)(1). **Note:** R.C.M. 705 prohibits disclosure of the existence of a plea agreement to the members unless one of the enumerated exceptions applies. In the event of sentencing by members, the military judge provides appropriate instruction on any sentencing limitations that exist in a case.

17.6.3. Segmented Sentencing by Military Judge. A plea agreement that requires sentencing by a military judge and includes sentencing limitations must specify any agreed upon limitations regarding confinement and fines, if any, for each enumerated offense. See [paragraph 17.6.2](#) and R.C.M. 1002(d)(2). The plea agreement may also specify whether any terms of confinement are to be served concurrently or consecutively. See R.C.M. 1002(d)(2)(B).

17.6.4. Unitary Sentencing by Members and Summary Court Officers. Any plea agreement that permits sentencing by members or a summary court officer and includes sentencing limitations must specify a single maximum, minimum, or maximum and minimum punishment for the offenses for which the accused is pleading guilty. See R.C.M. 1002(d)(1).

17.6.5. Plea Agreement Format. Plea agreements must be in writing and signed by the accused and counsel. When a convening authority accepts a plea agreement, the convening authority personally signs it, unless the convening authority previously authorized in writing another individual such as the SJA or trial counsel to sign. If the SJA or trial counsel signs the plea agreement, an authority line such as “FOR THE COMMANDER” must accompany the signature. Oral plea agreements are prohibited, as are promises to intervene on the accused’s behalf in any manner in exchange for a guilty plea. **(T-0)**. The SJA or designee ensures all documentation pertaining to a plea agreement is included in the ROT.

17.6.6. Changes to Plea Agreements. If at any point after the plea agreement is signed by the accused and convening authority, further negotiation results in an agreement for different relief or different terms than that included in the original offer, an updated plea agreement must be drafted and signed anew.

17.6.7. Stipulations of Fact. In order to make members and the military judge, when sitting alone, sufficiently aware of the circumstances of the offenses with which an accused is charged, the convening authority may require the accused and counsel to enter into stipulations of fact or testimony as a part of the plea agreement. See R.C.M. 705(c)(2)(A).

17.6.8. Withdrawal from Plea Agreements. Either party may withdraw from a plea agreement as provided in R.C.M. 705(e)(4).

17.6.8.1. Withdrawals by the convening authority should be in writing and signed by the convening authority. The SJA or designee gives a copy of any withdrawal to the accused and defense counsel.

17.6.8.2. Withdrawals by the accused should be in writing and given to the SJA or trial counsel.

17.6.8.3. The SJA or designee ensures the plea agreement and the withdrawal, by either side, is included in the ROT or, if not in writing, is discussed on the record. See DAFMAN 51-203.

17.6.9. Accused's Failure to Satisfy Plea Agreement Condition. If the accused does not fulfill a promise to satisfy certain conditions before action or during any period of suspension of the sentence as agreed to in the plea agreement, the convening authority may be relieved of the obligation to fulfill the agreement, provided that the accused's promise was included in the agreement and the hearing requirements in R.C.M. 1108 have been satisfied. See R.C.M. 705(c)(2); *United States v. Smith*, 46 M.J. 263 (CAAF 1997); *United States v. Hunter*, 65 M.J. 399 (CAAF 2008); *United States v. Shook*, 70 M.J. 578 (AFCCA 2011).

17.6.10. Convening Authority's Failure to Satisfy Plea Agreement Condition. Plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met (e.g., to ensure that there are forfeitures to waive, in the event the accused is an ARC member or the accused's ETS is going to run during the period of possible confinement). See [paragraph 17.3.4](#), [paragraph 20.12](#), and [Section 20F](#).

17.6.11. In-Court Inquiry. Trial counsel should notify the military judge or summary court officer of a plea agreement before arraignment, or as soon as practicable thereafter. The military judge or summary court officer must question the accused prior to accepting the plea to determine whether the accused understands and agrees to the meaning and effect of each plea agreement condition and the agreed upon sentence limitations.

17.6.11.1. Where there is a plea agreement, the sentence limitations should be inquired into by the military judge or summary court officer and included within the plea agreement. R.C.M. 910(f)(3).

17.6.11.2. Plea agreements that are subject to in-court inquiry, whether or not accepted by the military judge or summary court officer, are appellate exhibits in the ROT if a ROT is required. See DAFMAN 51-203.

Chapter 18

RESIGNATION, RETIREMENT, AND SEPARATIONS IN LIEU OF COURT-MARTIAL

Section 18A—Officer Resignation in Lieu of Trial by Court Martial (RILO)

18.1. General. Officers (including USAFA cadets) may submit a RILO request with the understanding that SecAF may direct a discharge under other than honorable conditions when their conduct makes them subject to trial by court-martial. A RILO is a type of resignation for the good of the service and is addressed in AFI 36-3207, *Separating Commissioned Officers*. A template is located on the VMJD.

18.2. Considerations. Commanders should not recommend SecAF accept a RILO for expediency when the alleged offense(s) would be more appropriately resolved at trial. Before making any recommendation, reviewing commanders at all levels should consider the best interests of the DAF and the effect a resignation would have on good order and discipline. The time and expense of a court-martial is rarely the deciding factor.

18.3. Timing.

18.3.1. Pre-Referral RILOs. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to submit RILO requests before charges are referred to trial by court-martial. Any reviewing commander may deny a RILO request submitted prior to the referral of charges. If denied, the officer may resubmit the request after referral of charges. Pre-referral RILO requests supported by all reviewing commanders' are forwarded expeditiously to JAJI through functional channels.

18.3.2. Post-Referral RILOs. If a request is submitted after referral and prior to arraignment, the request may only be acted upon by SecAF. RILO requests are forwarded expeditiously to JAJI through functional channels. A RILO request may not be submitted post-arraignment.

18.4. Defense Counsel. Before submitting a RILO request, officers may consult with counsel and are provided military defense counsel unless they expressly decline one.

18.4.1. If an officer refuses military counsel, the officer should so state in the request.

18.4.2. The DAF does not pay for or reimburse members for the costs of retaining civilian defense counsel.

18.5. Recoupment. Officers should understand that if SecAF accepts their resignation, they may be required to reimburse a portion of advanced education assistance, special pay, or bonuses received if they leave active duty before completing the period of active duty they agreed to serve. See AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*. Officers who are subject to recoupment of education assistance, special pay, or bonuses must sign a Recoupment Statement and attach it to their request. A template is located on the VMJD.

18.6. Resignation in Lieu of Trial by Court-Martial Request and Additional Documents. The RILO package includes all of the documents and recommendations listed in the Comprehensive RILO Checklist on the VMJD. This includes the views of any victims on the alternate disposition. See DAFI 51-207.

18.7. Review and Recommendation. The wing commander or equivalent authority reviews and makes a recommendation and forwards the package to the GCMCA (or to the SPCMCA if the wing commander or equivalent authority does not exercise special court-martial convening authority). A template is located on the VMJD.

18.7.1. The GCMCA reviews and makes a recommendation and forwards the package to the requesting officer's MAJCOM or FLDCOM commander, if applicable.

18.7.2. The MAJCOM or FLDCOM commander (or vice commander, if delegated), if applicable, reviews and makes a recommendation and forwards the package to JAJI with an information copy of the officer's request to HQ AFPC's Retirements and Separations Section (HQ AFPC/DP2SSR).

18.7.3. The wing or equivalent commander or any superior reviewing commander may return to an officer, without action, a request that is conditioned on the characterization of discharge SecAF may direct or on a specific date of separation.

18.8. Legal Review. The required legal review is done by the base-level legal office supporting the initial reviewing commander and should address the views of any victims on whether the resignation in lieu of trial by court-martial should be approved. Written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Written coordination indicating concurrence is required.

18.8.1. JAJI reviews the entire package, writes a comprehensive legal review, and processes the RILO package for Headquarters DAF review and action by SecAF or designee.

18.8.2. Headquarters AFPC/DP2SSR schedules the officer's date of separation as soon as possible upon receiving notification from JAJI that a RILO request has been approved.

18.8.3. The processing of a court-martial and court-martial charges should not be delayed solely because a RILO request may be or has been submitted, subject to [paragraph 18.9](#).

18.9. Permission to Proceed to Trial Pending Action on a RILO Request. For offenses committed after 24 June 2014, Article 60, UCMJ, prevents a convening authority from setting aside the findings of court-martial even if the Secretary later accepts a RILO. *In re Vance*, 78 M.J. 631 (ACCA 2018).

18.9.1. Prior permission from JAJI is required before a case proceeds to trial if the officer accused has submitted a RILO on which action is pending. For purposes of this paragraph, the start of trial is defined as the acceptance of pleas at or after arraignment. SJAs should consider requesting permission to proceed prior to arraignment. The SJA for the SPCMCA decides whether to request permission to proceed. A request for permission to proceed should include a justification for why the trial should proceed while the RILO request is pending action, such as witness availability for the scheduled trial date.

18.9.2. Permission to proceed is not required to conduct preliminary sessions pursuant to Article 39(a)(1), (2) and (4), UCMJ, including evidentiary hearings, and other motion practice that may expedite case processing in the interest of judicial economy, if such sessions occur prior to acceptance of pleas.

18.9.3. Thirty-Day Rule. JAJI will normally approve requests for permission to proceed to trial while a RILO request is pending if the officer submitted the request more than 30 calendar

days after service of charges under R.C.M. 602. In such cases, it is sufficient to justify the request for permission to proceed by citing the untimely submission of the RILO request. However, additional justification should be submitted if such justification exists.

18.9.3.1. JAJI will normally disapprove requests for permission to proceed to trial while a RILO request is pending if the officer submitted the request within 30 calendar days of service of charges under R.C.M. 602, unless circumstances warrant trial while the RILO request is pending.

18.9.3.2. A RILO request will be processed and not stopped, delayed, returned or rejected solely because it was submitted more than 30 calendar days after service of charges unless submitted after arraignment.

18.9.4. RILO requests pending action upon findings.

18.9.4.1. A resignation cannot be substituted for a finding of guilt. Instead, the RILO will automatically convert to a request for sentence relief under Article 74, UCMJ.

18.9.4.2. If an officer is fully acquitted prior to action on the RILO, the RILO becomes moot and SecAF loses the ability to act upon the RILO.

18.10. Subsequent Resignation in Lieu of Trial by Court-Martial Requests. The wing commander (or equivalent), or any superior reviewing commander, may return to an officer a subsequent RILO request that is based on the same grounds, supported by the same evidence, or is similarly insufficient as a previously disapproved resignation in lieu of trial by court-martial request, with the following exceptions:

18.10.1. An officer whose RILO request has been disapproved prior to referral of charges may resubmit the request after charges are referred to trial. A resubmitted request should be processed expeditiously to the command level that disapproved the original request. Additional indorsements or recommendations should not be attached unless different from those accompanying the original request or required by changed circumstances.

18.10.2. The Show Cause Authority (as defined in AFI 36-3206) may determine that circumstances warrant processing the subsequent RILO request.

18.11. Withdrawing RILO Requests. If an officer who submitted a RILO request subsequently submits a request to withdraw it, the wing-level or equivalent SJA or designee must notify JAJI and intermediate legal offices of the request to withdraw as soon as practicable.

18.11.1. If the withdrawal notification is made to JAJI prior to JAJI forwarding the RILO request for review and action by SecAF, JAJI will not forward the RILO request for review. If the RILO request has not yet been submitted to JAJI, the office in possession of the RILO request suspends further processing of the RILO request.

18.11.2. If the withdrawal notification is made to JAJI after JAJI forwarded the RILO request for review and action by SecAF, JAJI must notify reviewing agencies that a request to withdraw has been made and to suspend further processing of the RILO request. The request to withdraw is processed in the same manner as the RILO request and forwarded to JAJI through functional channels. See the RILO Withdrawal Checklist on the VMJD for minimum package requirements and detailed processing instructions. JAJI will forward the withdrawal request as soon as it is received.

18.12. RILO Processing Time Management. Expeditious processing of RILOs is essential to preventing judicial inefficiency, unnecessary trial delay, wasted resources, disruptions for victims and witnesses, prolonged uncertainty and anxiety for the accused, and impairment of mission accomplishment. The following measures are established for RILO processing:

18.12.1. Process a RILO request within 60 calendar days from the date the officer submits the request to the date the officer is notified of final action on the request. The 60 days are allotted as follows (all timelines are calendar days as opposed to duty days):

18.12.1.1. Wing-level (or equivalent) legal office processes and forwards the RILO package to JAJI with electronic copies for review and processing by legal offices at intermediate levels of command within ten days from the date the officer submits the RILO request.

18.12.1.2. NAF/FLDCOM-level or GCMCA (or equivalent) legal office processes and forwards the GCMCA's recommendation within seven days, in accordance with the RILO Checklist on the VMJD, after the wing-level legal office provides the electronic copy.

18.12.1.3. GCMCA legal office processes and forwards the MAJCOM or FLDCOM commander's recommendation, in accordance with the RILO Checklist on the VMJD, within seven days after the NAF-level or equivalent legal office (if applicable) provides an electronic copy of the GCMCA's recommendation.

18.12.1.4. JAJI and JAJ process and forward the RILO package to AF/JA within seven days after receipt of the complete package, including required recommendations by reviewing commanders and legal reviews.

18.12.1.5. AF/JA processes and forwards the RILO package for Headquarters DAF coordination within five days after receipt of the package from JAJ.

18.12.1.6. This leaves 24 days for Headquarters DAF coordination, SAF/MRBP recommendation, and SAF/MRB action or recommendation followed by SecAF action.

18.12.2. Failure to meet these time measures at any stage of resignation in lieu of trial by court-martial processing does not confer any rights or benefits on the accused.

18.13. Withdrawal and Dismissal of Charges. If a RILO request is pending action and the convening authority withdraws and dismisses all charges, the legal office must notify JAJI. The RILO request becomes void on the date the charges are dismissed. If charges are later preferred anew and the officer submits another resignation in lieu of trial by court-martial request, the process also begins anew.

18.14. Retirement in Lieu of Trial by Court-Martial (RetILO). If an officer or enlisted member submits a RetILO request, the wing/garrison-level (or equivalent) SJA or designee immediately contacts JAJI for further guidance.

18.14.1. In order to be eligible to request a RetILO, the member must be otherwise eligible to retire. This includes either meeting 20 years of TAFMS (and ten years of TAFMS to retire as an officer if requesting to retire as an officer) or equivalent ARC requirements for retirement as of the date the member submits the RetILO. AFI 36-3203, *Service Retirements*. **Note:** That the requesting member is pending trial by court-martial and trial has not yet begun is a retirement restriction that may be waived by SecAF or delegee in the best interest of the DAF.

The RetILO request is considered both a request to RetILO and a request for waiver of the retirement restriction of a pending trial by court-martial.

18.14.2. If the member is not retirement eligible, the RetILO may be denied at the local level. If the member is retirement eligible, generally, a RetILO request is processed in the same manner as a RILO request. See RetILO Checklist on the VMJD for package and processing requirements.

Chapter 19

TRIAL MATTERS

Section 19A—Rules of Court-Martial Practice (R.C.M. 108)

19.1. Authority to Prescribe Rules of Court-Martial Practice. TJAG designates the Chief Trial Judge as the official responsible for making and disseminating rules for the conduct of DAF court-martial proceedings. JAT publishes the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

Section 19B—Arraignment and Pleas

19.2. Arraignment and Pleas (Article 39(a), UCMJ). When an Article 39(a), UCMJ, session is conducted by the military judge, the arraignment may be held and the plea of the accused may be accepted at that time by the military judge. In addition, the military judge may enter findings of guilty on an accepted plea of guilty at that time.

Section 19C—Trial by Members

19.3. Impanelment. For all cases referred on or after 1 January 2019, there is a fixed-panel requirement. Capital GCMs require impanelment of 12 members and any alternates required by the convening authority; non-capital GCMs require impanelment of eight members and any alternates required by the convening authority; and SPCMs require impanelment of four members and any alternates required by the convening authority. The composition of a non-capital GCM can be reduced to no fewer than six members after impanelment as a result of challenges or excusals. See R.C.M. 501.

19.3.1. After the exercise of challenges for cause, members are assigned random numbers in accordance with procedures prescribed by JAT. See R.C.M. 912(f). After the assignment of numbers, the parties may exercise peremptory challenges. Members are then impaneled in accordance with R.C.M. 912A. Alternates, if required or authorized by the convening authority, are also seated in accordance with R.C.M. 912A.

19.3.2. Under the impanelment process prescribed in R.C.M. 912 and 912A, it is possible that a panel for an enlisted accused will be comprised entirely of enlisted members.

Section 19D—Trial by Military Judge Alone at the Request of the Accused

19.4. Requesting Trial by Military Judge Alone (R.C.M. 903). To request a trial by military judge alone, the accused should use the DD Form 1722, *Request for Trial Before Military Judge Alone*. If the DD Form 1722 is used, the military judge admits it as an appellate exhibit. See DAFMAN 51-203.

Section 19E—Audiovisual and Teleconferencing Technology

19.5. Use of Audiovisual and Teleconferencing Technology. The use of audiovisual and teleconferencing technology is authorized by the SecAF to the extent and under the conditions allowed for in R.C.M. 804(b), 805(a), 805(c), 914A, and 914B.

Section 19F—Classified, Confidential and Privileged Matters

19.6. General Provision. See M.R.E. 501-514 for a general discussion of evidentiary privileges that apply in the military justice system. This section is intended only to clarify application of certain rules and discuss privileges or confidential matters not included in the rules of evidence.

19.7. Classified or Controlled Information (M.R.E. 505). Special procedures and requirements apply in cases where classified information may be used as evidence. In all such cases, JAJM should be contacted as soon as possible for guidance on how to proceed.

19.7.1. Declassification. At the earliest stage practicable, government counsel should coordinate with the original classification authority to request declassification of potential evidence.

19.7.2. Asserting the M.R.E. 505 Privilege. Only SecAF, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a non-DAF government agency for documents owned by agencies outside the DAF, may claim the privilege from disclosure of classified information. See M.R.E. 505(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on the person's behalf. Requests for assertion of the privilege are forwarded through command channels to JAJI.

19.7.3. Classified Material in the Record. When a ROT contains classified material, the SJA or designee takes appropriate steps to declassify the material when proper. If it is impossible to declassify the material, the record must be classified. In determining whether a particular ROT must be classified because of its content, consideration should be given to DoDM 5200.01V1_AFMAN16-1404V1, *Information Security Program: Overview, Classification, and Declassification* and DoDM 5200.01V2_AFMAN16-1404V2, *DoD Information Security Program: Marking of Information*. DAFMAN 51-203 provides additional guidance.

19.7.4. Controlled Material in the Record. When a ROT contains controlled material (e.g., promotion testing materials, professional military education test materials, and career development course exams), the materials should be safeguarded to prevent further disclosure or unauthorized access. DAFMAN 51-203 provides additional guidance.

19.8. Government Information Other than Classified Information (M.R.E. 506).

19.8.1. Asserting the M.R.E. 506 Privilege. Only SecAF, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a government agency in the case of documents/information owned by agencies outside the DAF, may claim the privilege from disclosure of government information other than classified information. The privilege for records and information of The Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, The Inspector General, or any other superior authority. See M.R.E. 506(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on their behalf. Requests for assertion of the privilege are forwarded through command channels to JAJI.

19.8.2. Requests for assertion of the safety privilege should be forwarded through command channels and the Air Force Safety Center Office of the SJA (AFSC/JA) to JAJI.

19.9. Lawyer-Client Privilege with the Air Force or Space Force as the Client. Contact JAJI before asserting any privilege on behalf of the Air Force or Space Force.

19.10. Restricted and Unrestricted Reports of Sexual Assault.

19.10.1. Restricted Reporting. Restricted reporting allows a sexual assault victim to confidentially disclose the details of the assault to specified individuals and receive medical treatment and counseling without triggering the official investigative process. In cases where a victim selects the restricted reporting option by completing and signing Department of Defense (DD) Form 2910, *Victim Reporting Preference Statement*, providers authorized to receive such reports under AFI 90-6001, *Sexual Assault Prevention and Response Program* or DoDD 6495.01, *Sexual Assault Prevention and Response Program*, may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided by DoDI, DAF policy or the law. **(T-0).** A sexual assault victim may elect to convert a restricted report to an unrestricted report at any time by completing a DD Form 2910 and selecting the unrestricted reporting option.

19.10.2. The SARC, assigned Victim Advocate, and health care providers must consult with the servicing legal office, in the same manner as other recipients of privileged information, to determine if an exception applies permitting disclosure of identifying information. Until those determinations are made, only non-identifying information should be disclosed. When there is uncertainty or disagreement on whether an exception applies, the matter is resolved in accordance with AFI 90-6001, Chapter 3.

19.10.3. Unrestricted Reporting. Officially, an unrestricted report of a sexual assault can only be made via DD Form 2910. M.R.E. 514 protects statements made by the victim to specified individuals such as the SARC or a victim advocate, enabling the confidential disclosure of a sexual assault, but the filing of an unrestricted report triggers a notification to OSI.

19.10.4. Independent Investigation. An independent investigation is an official law enforcement investigation not initiated by a victim's report of sexual assault (via completion of DD Form 2910). An independent investigation may be initiated based on independently acquired information, such as when a commander immediately notifies OSI or the appropriate MCIO with information about a sexual assault from a source other than the victim or from other sources to law enforcement (e.g., friend of the victim or witness to the crime). Refer to [Section 33C](#) for DSAID reporting requirements associated with unrestricted reports and independent investigations of sexual assault. OSI or the appropriate MCIO will follow the guidance in DoDI 5505.18 when they receive a third-party report of a sexual assault

19.11. Restricted and Unrestricted Reports of Domestic Abuse.

19.11.1. Restricted Reporting. Restricted reporting is a process allowing an adult victim of domestic abuse, who is eligible to receive military medical treatment the option of confidentially reporting an incident of domestic abuse to a DAVA, FAP staff member, or any MTF healthcare provider for the purpose of receiving medical care, supportive services, and/or advocacy and information without initiating the investigative process or notification to the victim's or alleged offender's commander. See DAFI 40-301, *Family Advocacy Program*; DoDI 6400.06. M.R.E. 514 protects statements made by an alleged victim to victim advocates.

19.11.2. **Unrestricted Reporting.** A process allowing a victim of domestic abuse to report an incident using chain of command, law enforcement or AFOSI and the FAP for clinical intervention. Victims of domestic abuse who choose to pursue an official command or criminal investigation of an incident should use these reporting channels. See DAFI 40-301.

19.12. Psychotherapist-Patient Privilege (M.R.E. 513).

19.12.1. The M.R.E. 513 privilege does not apply if access to the confidential communications between a military member and a psychotherapist is sought for a non-UCMJ-related purpose. In these situations, confidential communications should be disclosed to persons or agencies with a proper and legitimate need for the information and authorized by law or regulation to receive them. When UCMJ proceedings are pending against the member whose confidential communications are being sought for a non-UCMJ-related purpose, no privilege applies for the non-UCMJ-related purpose.

19.12.2. Disputes between a requestor and a psychotherapist or patient may arise over the disclosure of confidential communications. In such circumstances, release of mental health records, like all protected health information, is made in accordance with DoDM 6025.18, *Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DOD Health Care Programs*, AFI 41-200, *Health Insurance Portability and Accountability Act (HIPAA)*, and other applicable law. The SJA in possession of any crime victim's mental health records related to a UCMJ case guards against improper disclosure of inadmissible evidence to investigators and trial counsel that may disqualify them from participating in a case.

19.12.3. See [paragraph 19.14](#) for guidance on the Limited Privilege Suicide Prevention Program, if applicable.

19.13. Confidential Drug or Alcohol Abuse Treatment Records. Federal statutes and regulations restrict the disclosure of records of the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with a federal drug and alcohol abuse education, prevention, training, treatment, rehabilitation, or research program. Refer to 42 U.S.C. § 290dd-2, *Confidentiality of Records*, and 42 C.F.R. § 2.1, *Statutory authority for confidentiality of substance use disorder patient records*.

19.13.1. Although the interchange of records entirely within the Armed Forces is exempt from the prohibitions in [paragraph 19.13](#), the DoD adopted the standards as a matter of policy to the extent it provides such records may not be used to initiate or substantiate any criminal charges against the rehabilitant, except as authorized by a court order issued under 42 U.S.C. § 290dd-2 and as allowed in DAFMAN 44-197, *Military Drug Demand Reduction Program*.

19.13.2. Disclosure of these records is permitted at the request of, and with written consent of, the accused-patient, in the following circumstances:

19.13.2.1. As evidence for the defense before findings.

19.13.2.2. As evidence in mitigation or extenuation in pre-sentencing proceedings.

19.13.2.3. After trial in support of clemency or clemency petitions to TJAG or SecAF.

19.13.3. 42 C.F.R. § 2.31 outlines the procedures to be followed in authorizing release of the records by the accused-patient. Discussion of the records in open court should be avoided to the extent feasible.

19.13.4. An accused may limit release to necessary and relevant records, but an accused cannot selectively authorize disclosure of the records to mislead the court or other parties to the trial (e.g., disclosing favorable early records, but not later ones indicating regression). If there is reason to believe an accused is selectively authorizing disclosure, the matter may be resolved among counsel or by an in camera review of the records by the military judge.

19.13.5. Drug and alcohol abuse records may be disclosed at trial without the consent of the accused to rebut or impeach evidence presented by the accused. See *United States v. Evans*, 20 M.J. 504 (A.C.M.R. 1985); *United States v. Fenyo*, 6 M.J. 933 (A.C.M.R. 1979), *pet. denied*, 7 M.J. 161 (C.M.A. 1979).

19.14. Limited Privilege Suicide Prevention (LPSP) Program.

19.14.1. **Overview & Responsibilities.** The LPSP program is designed to facilitate timely mental health treatment for Airmen and Guardians facing adverse actions who are at risk of suicide. Counseling, therapy or treatment, and admissions can all qualify under this program if provided by a military mental health provider (MHP) licensed in accordance with AFI 44-172, *Mental Health*.

19.14.1.1. **Mental Health Facility Responsibilities.** Mental health facilities provide patient care in accordance with their own regulations and guidance.

19.14.1.2. **Commander Responsibilities.** Commanders direct mental health evaluations in accordance with DoDI 6490.04 and AFI 44-172, paragraph 6.3. **(T-0).**

19.14.1.3. **Legal Office Responsibilities.** Legal offices or military legal consultants provide legal advice to the mental health facility and treatment providers regarding the LPSP program. Legal offices are responsible for training those involved in the military justice process on the LPSP program.

19.14.2. **Program Objective.** The objective of the LPSP program is to identify and treat Airmen and Guardians who, because of the stress of impending disciplinary action under the UCMJ, are at risk for suicide. Experience has shown that military members are often discouraged from seeking or participating in mental health treatment due to a perceived risk that doing so may result in worse outcomes in a future disciplinary action. In order to encourage and facilitate treatment, the LPSP program limits the use of certain confidential communications in disciplinary actions and service characterization in administrative separations.

19.14.3. **Program Eligibility.** Any Airman or Guardian who has been officially notified, verbally or in writing, that he or she is under investigation or is suspected of having committed an offense under the UCMJ is eligible for the LPSP program. Eligible Airmen and Guardians should be informed of the LPSP program and, when appropriate, encouraged to seek treatment from a mental health provider. Any person may inform the member about the program, including defense counsel and defense paralegals, commanders, First Sergeants, supervisors and all those involved in the military justice process.

19.14.4. **Initiation.** An Airman or Guardian enters the LPSP program when, subsequent to the notification described in [paragraph 19.14.3](#), the Airman or Guardian receives treatment or care from a mental health provider (MHP). This may be the result of a command directed

mental health evaluation, on the Airman's or Guardian's own initiative, or a continuation of ongoing or previous treatment.

19.14.5. **Duration.** The limited protections provided by the LPSP program shall apply until the member is no longer receiving mental health treatment or until the investigation and subsequent disciplinary action, if any, is closed. **(T-1).** However, matters that were disclosed while the member was in the LPSP program remain protected.

19.14.6. **Limited Protection.** Members in the LPSP program are granted limited protection with regard to information revealed in, or generated by, their clinical relationship with MHPs. Such information may not be used in any existing or future UCMJ action or when weighing characterization of service in an administrative separation. Commanders or persons acting under their authority, such as staff judge advocates, squadron executive officers, or first sergeants, may use the information for any other purposes authorized by law, this instruction, and other AFIs and programs.

19.14.7. The limited protection provided by the LPSP program does not apply to:

19.14.7.1. The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which evidence, generated by and during the LPSP relationship, has first been introduced by the member.

19.14.7.2. Disciplinary or other action based on independently derived evidence (other than from communications falling under the LPSP program).

Section 19G—Pre-sentencing Matters (R.C.M. 1001)

19.15. Personnel Records of the Accused. "Personnel records of the accused," as referenced in R.C.M. 1001, includes those records made or maintained in accordance with DAF directives that reflect the past military efficiency, conduct, performance, and history of the accused, as well as any evidence of disciplinary actions, including punishment under Article 15, UCMJ, and previous court-martial convictions.

19.15.1. Relevant material contained in an accused's personnel record may be admitted pursuant to R.C.M. 1001(b) if:

19.15.1.1. Counsel provided a copy of the document or made the document available to opposing counsel prior to trial; and

19.15.1.2. There is some evidence that:

19.15.1.2.1. The accused received a copy of the correspondence (a document bearing the signature of the accused, or a witnessed statement regarding the accused's refusal to sign) and had the opportunity to respond to the allegation; and,

19.15.1.2.2. The document was not over five years old on the date the charges were referred to trial.

19.15.1.3. Relevant material contained in an accused's personnel information file that does not comply with [paragraph 19.15.1](#) may be admitted under R.C.M. 1001 for rebuttal purposes if, in the military judge's discretion, other competent means of authenticating the material have been presented to the court. *United States v. Strong*, 17 M.J. 263 (C.M.A. 1984).

19.15.2. **NJP.** Records of NJP under Article 15, UCMJ, from any file in which the record is properly maintained by regulation, may be admitted if not over five years old on the date the charges were referred. This time period is measured from the date the commander notified the accused of the commander's intent to impose NJP. Periods in which the accused was absent without authority are excluded in computing the five-year period. If the personnel information file contains an Air Force Form 366, *Record of Proceedings of Vacation of Suspended NJP*, that meets this five-year requirement, a copy of the underlying record imposing the NJP is also admissible, regardless of whether the original Article 15, UCMJ, action was served on the accused within this time period. Nothing in this paragraph precludes use of Article 15, UCMJ, actions over five years old as rebuttal evidence pursuant to R.C.M. 1001.

19.15.3. **Performance Reports.** Trial counsel offers all enlisted or officer performance reports maintained according to departmental directives, as evidence of the character of the accused's prior service. See R.C.M. 1001(b)(2); *United States v. Wingart*, 27 M.J. 128 (C.M.A. 1988).

19.15.3.1. USAFA cadets do not have official performance reports. Counsel should consult with a USAFA cadet's chain of command to obtain equivalent USAFA-specific training records that record a USAFA cadet's performance.

19.15.4. **Previous Convictions.** The DD Form 493, *Extract of Military Records of Previous Convictions*, may be used to introduce evidence of an accused's previous conviction. Evidence of a previous conviction by SCM in which counsel did not represent the accused may not be introduced unless the accused waived the right to counsel. **(T-0).** See *United States v. Booker*, 5 M.J. 238, 246 (C.M.A. 1977). A conviction by SCM is not admissible until reviewed pursuant to Article 64(a), UCMJ. See R.C.M. 1001(b)(3).

19.16. Hate Crimes Evidence. Trial counsel may present evidence in aggravation that the accused intentionally selected a victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person. See R.C.M. 1001(b)(4).

19.17. Appeals by the United States from an Adverse Ruling by a Military Judge (R.C.M. 908).

19.17.1. Trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and R.C.M. 908, only after consultation with JAJG. The SJA decides whether to file such notice of appeal with the convening authority's concurrence.

19.17.2. After filing a notice of appeal conforming to the requirements of R.C.M. 908(b) with the military judge, trial counsel sends notice to JAJG within 20 days, requesting that office file the appeal with AFCCA. In the request, trial counsel will identify the ruling or order to be appealed and include the following:

19.17.2.1. A copy of the charges and specifications;

19.17.2.2. An original and two copies of the certified verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts;

19.17.2.3. Trial counsel's certification that the appeal is not taken to delay the case;

19.17.2.4. Trial counsel's certification that, if the order or ruling excludes evidence, the excluded evidence is substantial proof of a fact material in the proceeding; and

19.17.2.5. A memorandum opinion on the law applicable to the issues appealed, including an explanation why the issues appealed are significant enough to require appeal by the United States.

19.17.3. JAJG decides whether to file the appeal with AFCCA, and notifies the trial counsel, SJA, and JAJM Appellate Records Branch.

19.18. Extraordinary Writs by TC or VC. A petition for extraordinary relief by the prosecution or VC in a court-martial is a rare course of action. In the event a base legal office receives or intends to file an extraordinary writ, contact JAJG for guidance.

Section 19H—Sentencing

19.19. Applicable Sentencing Rules. Only one sentencing system applies in a court-martial—either the sentencing rules effective prior to 1 January 2019, or the sentencing rules prescribed under MJA 16. **(T-0).** See R.C.M. 902A. The date the referred specifications occurred will dictate whether the old or new sentencing rules apply. If any referred offenses occurred prior to 1 January 2019, contact JAJM for guidance, as the pre-MJA 16 sentencing rules will apply. **Note:** In cases where some, but not all referred offenses, occurred prior to 1 January 2019, the accused may elect to use the new sentencing rules for all specifications.

19.20. Plea Agreements and Sentencing Rules. If any offense was committed prior to 1 January 2019, the accused can opt-in to MJA 16 sentencing rules for all offenses. This includes opting into MJA 16 plea agreement rules to cover all of the offenses. In such cases, if the accused does not opt in to MJA 16 sentencing rules in a straddling case, then the parties may not enter into a plea agreement under Article 53a, UCMJ. **Note:** If all offenses occurred before 1 January 2019, then the accused may not opt-in to the Military Justice Act plea agreement framework regardless of when the case is referred. See [Section 17B](#) for additional sentencing considerations related to pretrial agreements and plea agreements.

19.21. Sentencing by Members. Any sentence by military members will be a single, unitary sentence for all offenses of which the accused was found guilty in that court-martial. **(T-0).** See R.C.M. 1002; Article 53, UCMJ.

19.22. Sentencing by Military Judge Alone.

19.22.1. **Segmented Sentencing.** For cases applying MJA 16 sentencing rules, military judges assign a separate term of confinement, if any, and fine, if any, for each specification of which the accused is found guilty. If multiple terms of confinement exist, the military judge determines if the terms run concurrently or consecutively. See R.C.M. 1002(d)(2). In making this determination, a military judge considers the requirements of R.C.M. 1002(d)(2).

19.22.2. **Default Military Judge Sentencing.** For cases applying MJA 16 sentencing rules, if an accused elects members for findings but does not affirmatively elect members for sentencing, the military judge will sentence by default. See Article 53(b)(1)(B), UCMJ.

19.23. Announcement of the Sentence. The sentence, whether determined by military judge or members, is announced by the military judge.

19.24. Completion of the AF Form 304, *Request for Appellate Defense Counsel*. In all GCMs or SPCMs in which there was a finding of guilty, the accused must complete an AF Form 304. If not accomplished as part of the court-martial proceeding, an AF Form 304 must be completed as

part of the immediate post-trial paperwork. See [paragraph 24.2](#) If the member declines appellate representation, see [paragraph 24.3](#).

19.25. Recommendation for Suspension of Sentence. A military judge may make a recommendation that all or part of a sentence be suspended. R.C.M. 1109(f). The recommendation must be included, along with a statement explaining the recommendation and a specified time period for the recommended suspension, on the STR. If the military judge makes this recommendation, there is no requirement that it be announced on the record.

Section 19I—Waiver of Appellate Review

19.26. Waiver of Appellate Review (Article 61, UCMJ; R.C.M. 1115).

19.26.1. If an accused wishes to waive Article 66, UCMJ, appellate review, follow the procedures outlined in R.C.M. 1115. The request to waive must be filed after the EoJ. The waiver should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*.

Note: Ensure use of the correct version of DD Form 2330, which is dictated by referral date. See Appendix 13, MCM.

19.26.2. A valid waiver of appellate review bars review by AFCCA. See Article 61(d), UCMJ. It does not prevent later submission of an Article 69(d), UCMJ application.

19.26.3. In the event of waiver, the base legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. See [paragraph 24.4](#) and [paragraph 24.15](#).

Section 19J—Contempt Proceedings

19.27. General Overview of Contempt Proceedings. Any person who uses any menacing word, sign or gesture in the presence of the judicial officer during the proceeding; disturbs the proceeding by any riot or disorder; or willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding may be punished for contempt. See Article 48(a), UCMJ.

19.28. Punishment Authority. The following judicial officers have the authority to punish a person for contempt: an appellate judge of the CAAF or AFCCA, military trial judges detailed to a court-martial or any other proceeding under the UCMJ, or the president of a court of inquiry. See Article 48(b), UCMJ.

19.29. Contempt Punishment. The maximum punishment for contempt is confinement for 30 days, a fine of \$1,000 or both. Article 48(b), UCMJ. **Note:** When imposed by the president of a court of inquiry, the maximum punishment is a fine of \$500.00.

19.29.1. Military members may not be placed in confinement in immediate association with enemy prisoners or foreign nationals detained under the law of war who are not otherwise members of the armed forces. **(T-0).**

19.29.2. A sentence to confinement begins when announced by the judicial officer unless the person held in contempt notifies the judicial officer of an intent to file an appeal, and the judicial officer, in the exercise of discretion, defers the sentence pending the decision of the reviewing authority. See R.C.M. 809(d) and 809(e)(4).

19.29.3. If issued by a court of inquiry, a fine does not become effective until approved by the convening authority.

19.30. Process. The process for imposition of punishment for contempt varies based on whether it was directly witnessed by the judicial officer authorized to impose punishment. See R.C.M. 809(b)-(c). To punish the alleged offender, the contempt must be proven beyond a reasonable doubt. **(T-0).** See R.C.M. 809(c).

19.31. Record. A record of the contempt proceedings must be included as part of the record. **(T-0).** If the offender was held in contempt, a separate record of the contempt proceedings must be prepared and forwarded for review. Contact JAJM for guidance with any record of contempt proceedings.

Chapter 20

STR THROUGH EOJ (POST-TRIAL PROCESS)

Section 20A—General Post-Trial Overview

20.1. Applicability. This chapter applies only to GCMs and SPCMs in which charges were referred on or after 1 January 2019. For SCMs, see [Chapter 23](#). For cases referred before 1 January 2019, contact JAJM for assistance.

20.2. Definition of “Victim” for Post-Trial. Practitioners should be cognizant of the changing definition of victim throughout the post-trial process. In certain circumstances, “victim” refers to any victim named in a specification, regardless of whether the specification resulted in a conviction. In other circumstances, “victim” refers only to named victims whose specifications resulted in a conviction.

20.2.1. Any victim, regardless of whether that victim’s allegation resulted in a conviction, receives the STR and the EoJ. R.C.M. 1101(d), 1111(f).

20.2.2. Any victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense for which the accused was found guilty receives an opportunity to submit matters to the convening authority under R.C.M. 1106A(b)(2).

20.2.3. A victim named in a specification who testified during the proceeding automatically receives a copy of the certified ROT, regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT. R.C.M. 1112(e).

Section 20B—STR

20.3. Requirement for a STR and Exceptions to Requirement. Following final adjournment in a GCM or SPCM, the military judge must ensure an STR is prepared and signed by the military judge. **(T-0).** However, in cases where the accused was arraigned and the trial resulted in a full acquittal, mistrial, dismissal of charges, or is otherwise terminated without findings, there is no requirement for a STR. In such cases, complete and distribute an EoJ as outlined in [Section 20I](#). Do not complete a STR in SCMs. See [Chapter 23](#) for further guidance in SCMs.

20.4. Mandatory Contents of STR. The STR must contain the content required under R.C.M. 1101. **(T-0). Note:** In cases where an expurgated STR is required, both an expurgated and unexpurgated STR must be prepared and signed by the military judge. See [paragraph 20.8](#) for discussion of expurgated and unexpurgated Statements of Trial Results. Trial counsel and military judges must follow the format and checklists provided on the VMJD.

20.5. Military Judge Recommendation for Suspension of Sentence. See [paragraph 19.25](#) for guidance.

20.6. Requirement for First Indorsement to STR. Prior to distribution, the SJA must sign and attach to the STR a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal record history indexing is required in accordance with DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*; firearm prohibitions

are triggered; and/or sex offender notification is required. See [Chapter 29](#) and AFMAN 71-102 for further information. Templates are available on the VMJD. The first indorsement is distributed with the STR. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.7. Distributing the STR. The SJA distributes the STR and first indorsement to those recipients identified in the STR/EoJ distribution list on the VMJD.

20.8. Unexpurgated and Expurgated Statements of Trial Results.

20.8.1. An expurgated copy of the STR is required in every case that otherwise requires a STR when the contents of a STR includes classified or other matters implicating privacy interests, as annotated in the paragraphs below. In such cases, legal offices must prepare both an expurgated and unexpurgated copy. The version with the content replaced is called the expurgated STR. Only certain parties receive the unexpurgated version. See [paragraph 20.8.2](#) When making expurgated copies, the initials should match the way the name is written on the charge sheet (e.g., “Jane Doe” becomes “J.D.” and “Jane B. Doe” or “Jane Belinda Doe” becomes “J.B.D.”) Make the following substitutions in the expurgated STR:

20.8.1.1. Names of individuals who were children under 16 years of age at the time of the offense are replaced with initials, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR). **Note:** If offenses only contain names of victims listed in this paragraph, only an expurgated copy of the STR is required;

20.8.1.2. Names of victims who were under 18 years of age at the time of the offense are replaced with initials when the charged offense is a child pornography offense, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR);

20.8.1.3. Names of adult sex offense victims are replaced with initials, regardless of the final outcome of the case. **Note:** For purposes of expurgation, a “sex offense” is any offense which requires sex offender notification in accordance with DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*.

20.8.1.4. Names of victims listed in paragraphs [20.8.1.1-20.8.1.3](#) when listed in other offenses on the charge sheet (e.g., if the same victim is listed as the victim of an Article 128, UCMJ, offense and an Article 120, UCMJ, offense, the victim’s name should be expurgated in both offenses such that the name cannot be ascertained from the Article 128, UCMJ, charge) should be replaced with initials, regardless of the final outcome of the case; and

20.8.1.5. Classified information is replaced with asterisks.

20.8.2. Distribution.

20.8.2.1. Unexpurgated Statements of Trial Results—Classified Cases. If an unexpurgated STR contains classified information, ensure the STR is properly marked with classified markings in accordance with the classification guide; then do not distribute it to any party. Provide the unexpurgated classified STR to JAJM as part of the original ROT, and maintain an unexpurgated classified copy in the legal office’s copy of the ROT in a container authorized to store classified information. For more information on the storage and transfer of classified information, see DAFMAN 51-203.

20.8.2.2. Unexpurgated STR—Unclassified Cases. For cases not involving classified information, distribute the unexpurgated STR to only the following parties within five duty days of completion of the STR:

20.8.2.2.1. JAJM, as part of the original ROT;

20.8.2.2.2. The confinement officer, noncommissioned officer, or commanding officer responsible for the confinement facility where the accused is held;

20.8.2.2.3. AFSFC/FC; and

20.8.2.2.4. AFSFC/FCV.

20.8.2.3. Expurgated Statements of Trial Results. All other individuals or organizations required to receive a STR are provided expurgated copies within five duty days of completion of the STR.

20.8.2.4. The full distribution list should be used on both versions of the STR. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list, add “*Recipients of unexpurgated STR.”

20.8.2.5. Refer to the STR Distribution Checklist on the VMJD for the most current guidance on distribution.

Section 20C—Accused’s Submission of Matters

20.9. General Requirement. The accused may submit written post-sentencing matters for the convening authority’s consideration in accordance with R.C.M. 1106. Submissions may not include matters that relate to the character of a victim unless such matters were admitted as evidence at trial. **(T-0).** See R.C.M. 1106.

20.9.1. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority.

20.9.2. If a victim submits post-sentencing matters under R.C.M. 1106A and **Section 20D**, trial counsel shall serve those matters on defense counsel within two duty days to allow the accused an opportunity to provide a written rebuttal.

20.10. Time Periods for Submissions.

20.10.1. In a GCM or SPCM, the accused may submit matters within ten calendar days after the sentence is announced.

20.10.2. If a victim submits post-sentencing matters under R.C.M. 1106A, the accused has five calendar days from receipt of those matters to submit matters in rebuttal. A sample notice to the accused of the opportunity to submit rebuttal matters is located on the VMJD. The day on which the accused is served victim’s matters does not count against the five-day time period.

20.10.3. The convening authority may extend the time periods for submission up to an additional 20 calendar days if the accused shows good cause for the extension. Extension requests must be submitted by the accused or defense counsel, in writing, to the trial counsel who will then provide it to the convening authority.

20.10.4. Notification to Accused. Immediately following the announcement of the sentence, the SJA or trial counsel notifies the accused of the right to submit matters under R.C.M. 1106. A template letter is provided on the VMJD. At a minimum, the notification letter must advise the accused:

- 20.10.4.1. The process for submitting matters to the convening authority;
- 20.10.4.2. That the convening authority will consider timely written matters submitted by the accused before deciding whether to grant the accused post-sentencing relief;
- 20.10.4.3. That the convening authority may not consider character evidence related to the victim unless such evidence was admitted at trial;
- 20.10.4.4. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;
- 20.10.4.5. That any matters submitted by the victim under R.C.M. 1106A and **Section 20D** will be provided to the accused for rebuttal;
- 20.10.4.6. That a failure to submit matters by the prescribed time constitutes a waiver;
- 20.10.4.7. That submission of any matters under R.C.M. 1106 shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limit is expressly reserved in writing;
- 20.10.4.8. That if the accused waives the opportunity to submit matters, the waiver may not be revoked; and
- 20.10.4.9. That the accused is entitled to request a copy of the recording and copy of, or access to, the exhibits to assist in the preparation of their matters. **Note:** There is no audio recording in a summary court-martial.

20.11. Access to Court-Martial Recordings and Evidence. To facilitate preparation of matters, the defense counsel or accused may request a copy of the court-martial recording and copies of, or access to, the exhibits. When preparing these records for release, the government should be cognizant that delays in providing the requested information may serve as grounds for the defense to request a delay in the submission of matters.

20.11.1. The government shall not release the recording under R.C.M. 1106 unless the government receives a written request from the defense. Upon receiving such a request, trial counsel is only authorized to release the recording of open court-martial sessions. Trial counsel must not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any person or party (including defense counsel or VC). **(T-0).** Trial counsel is not required to further redact the recordings (e.g., for personally identifying information), but shall not provide such recordings directly to the accused, only to defense counsel. Defense counsel must maintain the recording to prevent the unauthorized release of third-party personal information to any other party, including to the accused.

20.11.2. The government must provide access to exhibits upon written request from the defense, but should not normally provide copies of exhibits. **Note:** See **paragraph 20.11.1** for discussion on sealed exhibits.

20.11.3. In the event an accused is not represented by either military or civilian defense counsel, contact JAJM for guidance.

20.12. Application to Defer Sentence and Waive Required Forfeitures. Before the convening authority makes a decision as to whether to grant relief in a case, an accused may submit an application to the convening authority, through the servicing SJA, to defer any adjudged or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(b) and 58b(a)(1), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. Applications for deferral or waiver may be submitted through the servicing SJA at the same time the accused submits post-sentencing matters, or any time after the sentence is announced and before action. The convening authority may not defer any portion of a sentence without a request from the accused, except for a sentence to confinement. See Article 57(b), UCMJ, and R.C.M. 1103. The convening authority may waive automatic forfeitures of pay and allowances without a request from the accused. **Note:** Automatic and adjudged forfeitures go into effect automatically 14 days after the announcement of the sentence. See **Section 20F** for additional guidance on deferring and waiving forfeitures of pay and allowances.

20.13. Return to Duty. The return to duty system may offer selected enlisted personnel with exceptional potential the opportunity for relief concerning the characterization of their discharges and possible return to duty. See AFMAN 31-115, Vol 1, and Attachment 18 of that instruction for additional guidance on applications and requirements for applications for return to duty.

Section 20D—Victim's Submission of Matters

20.14. Generally. In any case resulting in a guilty finding for an offense that involved a victim who has suffered direct physical, emotional or pecuniary harm, the SJA must ensure the victim is provided an opportunity to submit written matters for consideration by the convening authority before the convening authority considers taking action. **(T-0).** See R.C.M. 1106A.

20.14.1. Submissions may not include matters that relate to the character of the accused unless such matters were admitted as evidence at trial. **(T-0).**

20.14.2. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority and the accused. The accused has an opportunity to rebut statements made by the victim in accordance with R.C.M. 1106(d)(3).

20.15. Time Periods for Submissions.

20.15.1. In a GCM or SPCM, the victim must submit any matters within ten calendar days after the sentence is announced. **(T-0).**

20.15.2. The convening authority may extend the time period for submissions up to an additional 20 calendar days, if the victim shows good cause for the extension. Extension requests must be in writing and submitted by the victim or VC to the trial counsel, who will provide it to the convening authority.

20.16. Notification. Immediately following trial, the SJA or trial counsel must provide a letter to eligible victims as defined in **paragraph 20.14**, if any, notifying them of their right to submit matters under R.C.M. 1106A. A template letter notifying a victim of the right to submit a Victim

Impact Statement is provided on the VMJD. At a minimum, the notification letter must advise the victim:

- 20.16.1. That the convening authority will consider any timely written matters submitted by the victim before deciding whether to grant the accused post-sentencing relief;
- 20.16.2. That the convening authority may not consider character evidence related to the accused unless such evidence was admitted at trial;
- 20.16.3. That the convening authority may not consider character evidence related to the crime victim unless such evidence was admitted at trial;
- 20.16.4. That the convening authority may not consider evidence of offenses of which the accused was not convicted at trial;
- 20.16.5. The process for submitting matters to the convening authority;
- 20.16.6. That any matters submitted by the victim will be provided to the accused's defense counsel for rebuttal by the accused;
- 20.16.7. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;
- 20.16.8. That the victim is entitled to only one opportunity to submit matters, and that a failure to submit matters by the prescribed time constitutes a waiver;
- 20.16.9. That if the victim waives the opportunity to submit matters the waiver may not be revoked; and
- 20.16.10. That the victim is entitled to request a copy of the recording and copies of, or access to, the exhibits to assist in the preparation of matters.

20.17. Access to Court-Martial Recordings and Evidence. To facilitate preparation of matters, the VC or victim may request a copy of the court-martial recording and copies of, or access to, the exhibits.

20.17.1. The government may release the recording under R.C.M. 1106A only upon receiving a written request from the eligible victim or VC. Upon receiving such a request, trial counsel is only authorized to release the recordings of open court-martial sessions. Trial counsel may not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any other party or person (including defense counsel or VC). Trial counsel is not normally required to further redact the recording (e.g., for personally identifying information) except as indicated below. However, to ensure compliance with the Privacy Act, the government should release the recording in the following manner:

20.17.1.1. If the victim is represented by a VC, trial counsel should provide the recording to the victim's VC as an official use disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*. The VC must maintain the recording in accordance with the Privacy Act. **(T-0)**. If the victim is represented by a civilian VC, trial counsel may provide the recording in accordance with the Privacy Act. See [paragraph 8.5.5](#).

20.17.1.2. An unredacted recording (e.g., a recording of all open sessions that has not been redacted for PII) may be provided directly to the victim only if the victim is not represented by counsel. **Note:** Such recording may not include any closed, sealed or classified sessions absent an order from the military judge. See [paragraph 20.17.1](#) The recording may be provided to an unrepresented victim as a routine use under the Privacy Act system of records notice for Air Force courts-martial records. See SORN, DoD 0006.

20.17.2. The government must provide access to exhibits upon written request from the VC, if the victim is represented, or to the victim if the victim is unrepresented, but should not normally provide copies of exhibits. If the government chooses to provide copies of exhibits, third-party personal information must first be redacted. **Note:** Victims should not be given access to or copies of sealed exhibits.

Section 20E—Convening Authority Decision on Action

20.18. Applicable Version of Article 60, UCMJ. The convening authority may grant clemency on a case depending on what version of Article 60, UCMJ, applies. To determine the applicable version of Article 60, UCMJ, look at the date the earliest offense resulting in a conviction was committed. The version of Article 60, UCMJ, in effect on that date applies to the entire case.

20.18.1. In any court-martial where an accused is found guilty of at least one specification involving an offense that was committed before 1 January 2019, a convening authority errs if he fails to take one of the following post-trial actions: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part.

20.19. Convening Authority Discretion. The convening authority may grant post-sentencing relief on the findings and/or sentence of a court-martial in accordance with the applicable versions of Articles 60, 60a, and 60b, UCMJ, and their associated R.C.M.s.

20.19.1. When deciding whether to grant relief under these rules, the convening authority has two options: act on the findings and/or sentence or not act on the findings and/or sentence. A decision to act, or take action, is tantamount to granting relief, whereas a decision not to act, or to take no action, is tantamount to granting no relief. Granting post-sentencing relief (i.e. a decision to act) is a matter of command prerogative entirely within the discretion of the convening authority, as limited by the applicable version of Article 60, UCMJ. See [paragraph 20.18](#).

20.19.1.1. The process of documenting the convening authority's decision on whether or not to grant relief in general and special courts-martial is reflected in the convening authority's decision on action memorandum (CADAM). For summary courts-martial, refer to [paragraph 23.21](#) A template for the CADAM is located on the VMJD. The template includes language to address a potentially ambiguous development in Article 60, UCMJ with respect to the word, "action." Prior to MJA 16, a convening authority was required to take post-trial "action" in one of the following ways: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. Following MJA 16, new Articles 60a and 60b, UCMJ, use the words, "act" and "action" differently. These terms mean granting any form of relief.

20.19.1.2. Where an accused is found guilty of at least one specification involving an offense that was committed before 1 January 2019, the convening authority must take

action in one of the following ways: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. For cases where an accused is found guilty only of offenses committed after 1 January 2019, the convening authority may choose to take no action—in which case no relief will be granted—or the convening authority may choose to act—in which case some relief will be granted in the form that the convening authority determines. See [paragraph 20.25](#) and *United States v. Brubaker-Escobar*, 81 M.J. 471 (CAAF 2021).

20.19.1.2.1. Drafting a reprimand that was announced as part of the sentence does not constitute action. Thus, even in a case where the convening authority does not take action (i.e., does not grant relief), the convening authority must still provide the language for the reprimand. Similarly, stating a requirement for the accused to be placed on excess leave is not action, but will be included in the CADAM. Finally, making a decision on deferment or waiver does not constitute action, but will be included in the CADAM.

20.19.2. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may recommend administrative, rather than punitive, discharge to SecAF under Article 74(b), UCMJ. If a convening authority is considering making such a recommendation, the convening authority's SJA should contact JAJI for assistance and coordination.

20.20. Military Judge Suspension Recommendation. In all cases, regardless of the date of the offenses, the convening authority may suspend a sentence in accordance with a military judge's recommendation as annotated on the STR. See Article 60a(c), UCMJ. However, the convening authority may not suspend a mandatory minimum sentence or exceed the suspension recommendation of the military judge. **(T-0).** Further, the duration of the suspension may not be less than that recommended by the military judge. **(T-0). Note:** Separation which terminates status as a person subject to the UCMJ will result in remission of the suspended portion of the sentence. See R.C.M. 1107(e).

20.21. Required Considerations. Before making a decision to take action or to take no action, the convening authority must:

20.21.1. Consult with a SJA or legal advisor **(T-0)**; and

20.21.2. Consider matters timely submitted by the accused under R.C.M. 1106 and the victim(s), if any, under R.C.M. 1106A. **(T-0).**

20.22. Consultation with Staff Judge Advocate. For cases referred on or after 1 January 2019, legal advice should generally not be provided in writing, as it is not required. However, if written legal advice is prepared, then the SJA must serve it on the accused and accused's counsel, as well as on any victim(s). Likewise, if any subsequent legal reviews are prepared in writing and raise new matters to which the accused has not had an opportunity to provide rebuttal matters, such legal reviews must also be served on the accused and accused's counsel and on any victim(s).

20.23. Matters Adverse to the Accused. If the convening authority wishes to consider any matters adverse to the accused that were not admitted at trial, then the convening authority must first cause those matters to be served on the accused with an opportunity to rebut. **(T-0).**

20.23.1. The SJA shall serve any such matters on the accused and the accused's counsel, and shall notify the accused, in writing:

20.23.1.1. That the convening authority may consider information adverse to the accused not previously admitted at trial;

20.23.1.2. That the accused has a right to rebut the information; and

20.23.1.3. The date on which the accused's rebuttal matters are due to the SJA, which should be no less than five calendar days from the date on which the accused is notified.

20.23.2. This notification memo will be attached to the record of trial, behind the memo documenting the convening authority's decision to take action or to take no action. See [paragraph 20.25](#).

20.23.3. Upon receiving rebuttal matters, if any, from the accused, the SJA provides those to the convening authority. The SJA does not have to prepare a corresponding written legal review or memo.

20.23.4. The convening authority indicates, in writing, whether such matters were considered and, if so, whether the accused submitted matters in rebuttal. This may be incorporated into the same memo the convening authority uses to document the decision to take action or to take no action. See [paragraph 20.21](#) and [paragraph 20.25](#). Templates are available on the VMJD.

20.24. Timing of Convening Authority Decision to Take Action/No Action. The convening authority must generally act before the EoJ. However, the convening authority may grant relief upon recommendation of trial counsel for substantial assistance by the accused after the EoJ by accomplishing a new memorandum. See R.C.M. 1109(e)(3)(B) and (e)(7); see also R.C.M. 1110(c)(2). If trial counsel's recommendation is made more than one year after the EoJ, the GCMCA over the command to which the accused is assigned may reduce the sentence only if the criteria in R.C.M. 1109(e)(5)(B) is met.

20.25. Documenting Convening Authority Action/No Action in a GCM or SPCM.

20.25.1. For cases where all offenses resulting in a conviction occurred after 1 January 2019, the convening authority may either take action to reduce the findings or sentence, in accordance with Article 60, UCMJ, or take no action. The date of the earliest offense for which an accused is found guilty controls which version of Article 60, UCMJ, applies, and thus what a convening authority must do. See [paragraph 20.19](#).

20.25.2. In any case where an accused is found guilty of at least one specification where the offense was committed before 1 January 2019, a convening authority errs if he fails to take one of the following mandated post-trial actions in a case: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. See [paragraph 20.19](#).

20.25.3. If all offenses for which the accused is found guilty occurred after 1 January 2019, the convening authority does not need to take action to approve the findings or sentence. See [paragraph 20.19](#).

20.25.4. The convening authority's decision must be in writing. If the convening authority decides to take no action in a GCM or SPCM, no rationale is required. If the convening authority decides to take action in a GCM or SPCM, the convening authority's decision must include a paragraph explaining the reasons for the action. **(T-0).**

20.25.5. The convening authority's written decision to take action or no action in a GCM or SPCM must be attached to the record of trial. Templates, checklists, and sample action language are located on the VMJD. At a minimum, the convening authority's written decision on action must:

20.25.5.1. Indicate the action taken, if any, on the findings or the sentence and the rationale (to include whether the action was taken as a result of a trial counsel substantial assistance recommendation);

20.25.5.2. Express the convening authority's decision on a military judge suspension recommendation, if any;

20.25.5.3. Annotate whether the convening authority intends to grant or previously granted any deferments or waivers of forfeitures, the effective/expiration dates for any such deferments or waivers, and the dependent who will receive waived forfeitures;

20.25.5.4. Direct the member to be placed on excess leave pending appellate review if required under [Section 20M](#).

20.25.6. The CADAM must include any reprimand language in cases in which a reprimand was adjudged by the court, provided the convening authority does not disapprove the reprimand. See [paragraph 20.19](#).

20.26. Service of the CADAM in a GCM/SPCM. The SJA must serve the CADAM on the military judge, court reporter, counsel for the accused, and counsel for the victim. **(T-0)**. In the event the accused or victim is not represented by counsel, the CADAM must be served on the accused or victim, as applicable. If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. **(T-0)**.

20.27. Documenting and Serving Convening Authority Action in an SCM. See [Chapter 23](#).

20.28. Disqualification of a Convening Authority. A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute a personal interest in the outcome of the case or a personal bias towards the accused. See *United States v. Gudmundson*, 57 M.J. 493 (CAAF 2002); *United States v. Voorhees*, 50 M.J. 494 (CAAF 1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 2 C.M.R. 161 (C.M.A. 1952).

Section 20F—Forfeitures of Pay, Deferment and Waiver (Articles 57(b) and 58b, UCMJ; R.C.M. 1103)

20.29. Adjudged Versus Automatic Forfeitures. The ability of a convening authority to defer or waive forfeitures of pay and allowances hinges on whether the forfeitures are adjudged or automatic (the latter of which is also known as "mandatory forfeitures").

20.29.1. Adjudged forfeitures are those forfeitures imposed as part of a court-martial sentence. See Article 57(a), UCMJ, and R.C.M. 1103. Adjudged forfeitures take effect 14 calendar days after the sentence is announced.

20.29.2. Automatic forfeitures are forfeitures that take effect by operation of law. See Article 58b, UCMJ. An accused must forfeit pay and allowances if sentenced to confinement for more

than six months or if sentenced to a punitive discharge or dismissal and any length of confinement.

20.29.2.1. Automatic forfeitures take effect 14 calendar days after the sentence is announced.

20.29.2.2. The amount of automatic forfeitures in a GCM is all pay and allowances otherwise due to the accused. The amount of automatic forfeitures in an SPCM is two-thirds pay otherwise due to the accused. Allowances otherwise due are not subject to mandatory forfeitures in an SPCM.

20.29.2.3. Automatic forfeitures only take effect if the following three conditions exist:

20.29.2.3.1. The adjudged sentence includes confinement for more than six months or death, or confinement for six months or less and a punitive discharge;

20.29.2.3.2. The accused is in confinement or on parole; and

20.29.2.3.3. The accused is otherwise entitled to pay and allowances that are subject to automatic forfeitures.

20.29.2.4. Automatic forfeitures do not apply to summary courts-martial. See R.C.M. 1003(a)(2), Discussion.

20.30. Deferment Versus Waiver. Deferment and waiver of forfeitures are distinct concepts that operate differently depending on whether the forfeitures are adjudged or automatic.

20.30.1. Deferment (Article 57(b), UCMJ). Deferment is a postponement of the running of a sentence. Upon written application of the accused, the convening authority may defer adjudged and automatic forfeitures until the EoJ or, in the case of a SCM, until a convening authority acts on the sentence. Deferred forfeitures are paid directly to the accused. The accused may apply for deferment regardless of whether the accused has dependents. The convening authority may rescind a deferment at any time.

20.30.1.1. The factors an accused must establish in a deferment request, and the factors a convening authority must consider, are provided in R.C.M. 1103(d)(2).

20.30.1.2. The convening authority's action on the deferment request must be in writing and must include the basis for any denial. **(T-0)**. Annotate whether the accused requested deferment of confinement, forfeitures or, reduction in grade. If the accused requested more than one deferment, address each. Specify the nature of the request, the convening authority's decision, the reason for the convening authority's decision (see, R.C.M. 1103(d)(2)), the effective date if approved, and the expiration date. A copy of the convening authority's action on the deferment request must be included in the record of trial and provided to the military judge and accused. **(T-0)**. Inclusion of the approved deferment in the CADAM satisfies this requirement.

20.30.1.3. If the convening authority grants deferment, the deferment continues until EoJ unless the convening authority mitigates, suspends or disapproves the adjudged forfeitures prior to EoJ, in which case the deferment or adjudged forfeitures ends at the time at which the convening authority acts, and are thereafter mitigated, suspended or disapproved.

20.30.2. Waiver (Article 58b, UCMJ). The convening authority may waive automatic forfeitures for no more than six months for the benefit of the accused's dependents. Waived

forfeitures are paid directly to the accused's dependents. Dependent is defined by 37 U.S.C. § 401, *Definitions*. See [paragraph 20.32](#).

20.30.2.1. The convening authority may not waive adjudged forfeitures. **(T-0)**. However, the convening authority may take action under Articles 60, 60a or 60b, UCMJ, to defer, suspend, mitigate, or disapprove all or part of adjudged forfeitures, and then waive any resulting automatic forfeitures. See *United States v. Emminizer*, 56 M.J. 441 (CAAF 2002). If the convening authority does not take action on adjudged forfeitures, then automatic forfeitures will take effect. Sample language the convening authority may use to defer, suspend, mitigate or disapprove all or part of adjudged forfeitures can be found on the VMJD.

20.30.2.2. The factors a convening authority may consider before granting a waiver are provided in R.C.M. 1103(h)(2).

20.30.2.3. The convening authority may waive automatic forfeitures for the purpose of providing support to the accused's dependents even if the accused does not apply for a waiver.

20.30.2.4. The convening authority may waive automatic forfeitures at any point before the EoJ. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.

20.30.2.5. Waived forfeitures cannot be applied beyond a member's expiration of term of service because the pay entitlement ceases at that point. Practitioners shall always verify the accused is entitled to pay before recommending the convening authority waive forfeitures as a part of the plea agreement.

20.30.2.6. If the convening authority grants waiver of any portion of automatic forfeitures, the convening authority should specify the date on which the waiver is effective. The waiver may begin no later than the EoJ.

20.30.3. A request for a combination of deferral and waiver can maximize the pay and allowances going to the accused and the accused's family members. For example, the accused may request that the convening authority defer automatic and adjudged forfeitures until the EoJ and then waive automatic forfeitures starting on the EoJ for a period not to exceed six months. However, a convening authority who waives automatic forfeitures starting at EoJ should also consider disapproving, commuting or suspending some or all of the adjudged forfeitures for the same period. *U.S. v. Emminizer*, 56 M.J. 44 (CAAF 2002). Transitional compensation is a separate and distinct application process from deferral and waiver; nevertheless, it is also an opportunity to assist victims and it begins when the EoJ is signed. See AFI 51-207 and AFI 36-3012, *Military Entitlements*, Chapter 8.

20.31. Mechanics of Deferring and Waiving Forfeiture of Pay. [Table 20.1](#) explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period.

20.31.1. **Accused's Deferment Request.** If an accused requests deferment of a reduction in grade, a forfeiture of pay and allowances, or sentence to confinement until EoJ, the convening authority may approve the request, in full or in part, or may disapprove the request. See [paragraph 20.30.1.2](#).

20.31.1.1. The accused's deferment request as to forfeitures should specify whether it is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferment of both.

20.31.1.2. The convening authority's decision on the request should be reflected in a signed and dated document. This includes the basis for any denial. See [paragraph 20.30.1.2](#).

20.31.1.3. The terms of approved deferment requests are reported in a 14-day memorandum and decision on action memorandum signed by the convening authority. Templates for both documents can be found on the VMJD. See [paragraph 20.30.1.2](#).

20.31.1.4. A deferment of forfeitures may be for adjudged forfeitures, automatic forfeitures or both, and for all pay and allowances to which the accused is entitled or a lesser sum. However, deferment does not extend beyond the time at which the EoJ is completed in a GCM or SPCM or beyond action in a SCM. R.C.M. 1103(f).

20.31.2. Waiver of Automatic Forfeitures. In cases where automatic forfeitures are waived, whether prior to or as part of the convening authority's action, the approved waiver should state the amount approved in dollar amounts per month, unless the waiver is for total pay and allowances in a general court-martial. If waiver of forfeiture of two-thirds pay is approved in a special court-martial, the total should be reflected in whole dollar amounts.

20.31.2.1. The convening authority must identify the dependents who will receive the waived forfeitures. If payments are made to an ex-spouse, or multiple ex-spouses, or other person on behalf of minor dependents, the SJA or designee obtains confirmation that the designated payee is the appointed guardian or custodian of a minor dependent and that the accused does not have access to the account. Legal offices should provide information described in AFMAN 65-116V1, *Defense Joint Military Pay System Active Component (DJMS-AC) FSO Procedures*, to the local finance office when processing waiver requests. This information includes a copy of the waiver request (if submitted), copy of the approved waiver request with amount approved, full name of payees, proof of dependency of payees or certification that the payees are dependents of the member, payment account information, and a statement signed by payee and member agreeing to notify legal and finance if the payee ceases being a dependent during the period payments are made.

20.31.2.2. If automatic forfeitures are waived before the decision on action, the convening authority must reflect approval in a signed and dated document at the time forfeitures are waived. Such a waiver of automatic forfeitures is also reported in the 14-day memorandum and in the CADAM.

20.31.2.3. The local accounting and finance office should be consulted to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. **Note:** These considerations could affect the enforceability of a plea agreement or pretrial agreement. A number of factors can impact the following entitlements:

20.31.2.3.1. Basic Allowance for Subsistence. The accused loses Basic Allowance for Subsistence upon entry into confinement, thus the convening authority cannot give the accused's family any portion of the accused's Basic Allowance for Subsistence.

20.31.2.3.2. Taxes. Federal and state taxes are withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

20.31.2.3.3. Grade Reduction. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration. To the extent that it is allowed by law under Article 58a, UCMJ, a grade reduction can be deferred but cannot be waived.

20.31.2.3.4. Active Duty Spouse. A spouse who is also a Regular DAF member may receive only waived forfeiture of pay, not pay and allowances. **(T-0)**.

20.31.2.3.5. ETS. There are no forfeitures to waive on any date after the accused's ETS. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond their ETS may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. **(T-0)**. See *United States v. Perron*, 58 M.J. 78 (CAAF 2003).

20.31.2.3.6. Foreign Accounts. The Defense Finance and Accounting Services (DFAS) has experienced difficulties making deposits into certain foreign bank accounts. Plea agreement and pretrial agreement terms requiring deposits of pay into foreign account may be impractical to accomplish.

20.31.2.3.7. Title 10 Status. As with ETS, if a member's Title 10 status expires (e.g., members recalled to Title 10 active duty in order to be tried by court-martial), there are no forfeitures to waive after the status expires. See [Chapter 3](#) for further guidance.

20.32. Dependency Determinations under Article 58b, UCMJ.

20.32.1. Dependent is defined by 37 U.S.C. § 401.

20.32.2. Evidence of Dependency. Sufficient evidence of dependency is required to support an Article 58b, UCMJ, waiver. The nature of this evidence will depend on the status of the dependent.

20.32.2.1. Dependency status for a spouse or child may be established by their enrollment in the Defense Enrollment Eligibility Reporting System or by other competent evidence, such as, a marriage certificate, a birth certificate, or a court order establishing paternity or child support obligations for a child.

20.32.2.2. Dependency determinations for a child over 21 years of age, parents or a ward are more complex because they only qualify as a dependent if the military sponsor provides more than one-half of their support. A precondition for waiving forfeitures for the benefit of one of these dependents should be an approval letter of dependency from DFAS. The accused, or other party requesting the waiver, should provide a copy of the DFAS approval letter with any request to waive mandatory forfeitures. If an accused is unable to qualify

one of these persons as a dependent with DFAS, then there will normally be insufficient evidence of dependency to support an Article 58b, UCMJ, waiver of mandatory forfeitures.

20.33. Required Adjustment of Forfeitures. If the convening authority takes action on a sentence that then creates an illegal punishment (e.g., no confinement but a forfeiture exceeding 2/3 pay per month), legal offices should ensure that this is corrected before EOJ.

20.34. Deferral and Waiver in Cases With Offenses Committed Prior to 1 April 1996. See the VMJD for information on forfeitures related to offenses committed prior to 1 April 1996. Contact JAJM for assistance.

Table 20.1. Relationship between Adjudged and Automatic Forfeitures.

FORFEITURE PERIOD	ADJUDGED FORFEITURES	AUTOMATIC FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service.	Not in effect. Accused continues to be paid unless post expiration of term of service.
14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED UNTIL EOJ	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents (in the case of a waiver). (See Notes 3 & 4)
EOJ	In effect unless the convening authority approves, disapproves, commutes or suspends the adjudged forfeitures in whole or in part.	In effect, except any portion the convening authority has waived. Waiver period may not exceed six months. (See Notes 4 & 5)

FORFEITURE PERIOD	ADJUDGED FORFEITURES	AUTOMATIC FORFEITURES (See Note 1)
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Automatic forfeitures only apply when the three conditions listed in paragraph 20.29.2.3 exist. 2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or automatic forfeitures 14 days after the date on which the sentence was adjudged until the EoJ. The accused should specify whether the deferment requested is for adjudged forfeitures, automatic forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused is paid a sum equal to entitled pay and allowances, minus any amounts not deferred. The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time. 3. The convening authority may waive available automatic forfeitures with or without a request from the accused. The convening authority may waive automatic forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above). 4. Automatic forfeitures may be waived until the earlier of: (1) a period not to exceed six months; (2) the accused's release from confinement; or (3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above). 5. If the convening authority acts on the sentence, the convening authority may waive all or a portion of the available automatic forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to enable the convening authority to waive any amount of automatic forfeitures. See <i>U.S. v. Emminizer</i>, 56 M.J. 441 (CAAF 2002). 		

20.35. Service of Legal Review on the Accused. There is no requirement to prepare written legal advice to a convening authority pertaining to a request for deferment or waiver. However, if written legal advice is prepared the legal office must understand the distinction between advice that must be served on the accused and advice where service is not required. Written legal advice pertaining to deferral requests need not be served on the accused. Written legal advice pertaining to waiver requests must be served on the accused. **(T-0).**

20.35.1. Article 57(a), UCMJ, Deferral of Forfeiture Requests. In *United States v. Key*, 55 M.J. 537 (AFCCA 2001), the Court held that an SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority, where the SJA's review does not contact a "new matter." The Court compared such a request to a request for deferral of confinement, for which no SJA recommendation is required and, when prepared, historically, is not served on the accused. The SJA or designee ensures that any decision by the convening authority on the request is included in the ROT.

20.35.2. Article 58b, UCMJ, Waiver of Forfeiture Requests. In *United States v. Spears*, 48 M.J. 768 (AFCCA 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a

clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. The SJA or designee is required to serve any written legal review on the accused and defense counsel before submission to the convening authority and must include it as an attachment to the completed ROT.

Section 20G—Contingent Confinement

20.36. Contingent Confinement. Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See R.C.M. 1003(b)(3). A fine-enforcement provision may be ordered executed in accordance with the procedures below.

20.36.1. **Authority to Execute Contingent Confinement.** A fine does not become effective, and the accused is not required to pay, until EoJ. See Article 57(a), UCMJ. The convening authority may not order an accused to serve contingent confinement until the EoJ is complete and the requirements of [paragraph 20.37](#) are met. If the accused fails to demonstrate good faith efforts to pay the fine, the convening authority may order the sentence of confinement by following the procedures outlined in [paragraph 20.37](#).

20.36.2. **Enforcement.** Once court-martial jurisdiction attaches, an accused remains subject to the UCMJ through the execution and enforcement of a sentence. Article 2(a)(1), UCMJ, confers jurisdiction over members of a regular component of the armed forces, including those awaiting discharge after the expiration of terms of enlistment. Jurisdiction continues for the purpose of enforcing an adjudged sentence for individuals discharged as the result of a court-martial conviction. *Carter v. McClaghry*, 183 U.S. 365 (1902); *Peebles v. Froehlke*, 46 C.M.R. 266 (C.M.A. 1973).

20.37. Procedures for Executing Contingent Confinement. Contingent confinement may be executed in accordance with the following procedures:

20.37.1. When the fine is ordered executed, the convening authority notifies the accused in writing the fine is due and payable. A specific due date must be included in the notification. If the accused is in confinement, the due date should normally be a reasonable period before the accused is scheduled for release from confinement to allow adequate time for a contingent confinement hearing and convening authority action.

20.37.2. After the fine is considered due, the SJA for the base where the accused was tried ascertains whether the accused has paid the fine. If it appears the fine has not been paid, the SJA notifies the convening authority. If the convening authority finds probable cause to believe a fine is unpaid, the convening authority may order a post-trial contingent confinement hearing. The convening authority for this hearing is the officer who convened the court-martial, a successor in command, or the officer exercising general court-martial convening authority over the command to which the accused is assigned. If the accused is no longer on active duty and is not a member of the ARC, AFDW/CC is the convening authority. The purpose of the hearing is to determine whether the fine is delinquent, whether the delinquency, if any, resulted from the accused's indigence and whether the contingent confinement should be executed.

20.37.3. A military judge is detailed as hearing officer to conduct the contingent confinement hearing. This detailing is accomplished in the same manner as detailing a military judge to a court-martial.

20.37.4. The SJA or designee provides the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused's residence. See AFMAN 65-605V1, *Budget Guidance and Technical Procedures*, for appropriate funding authority. The notice informs the accused of the following:

20.37.4.1. The accused's alleged failure to pay the fine;

20.37.4.2. The purpose of the hearing to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

20.37.4.3. The accused's right to present witnesses and documentary evidence;

20.37.4.4. The accused's right to representation by military defense counsel; and

20.37.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

20.37.5. Unless the hearing is otherwise waived, the hearing officer makes findings on whether payment of a fine is delinquent and whether any delinquency resulted from the accused's indigence. Payment of a fine is delinquent if not made within the period specified in the approved sentence or, if no period is specified, within a reasonable time. An accused's failure to pay a fine is not due to indigence if the failure to pay the fine resulted from a willful refusal to pay the fine or a failure to make sufficient good faith efforts to pay it. The Government bears the burden of proof, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden of proof, by a preponderance of the evidence, of showing that any delinquency resulted from indigence.

20.37.6. Hearing Procedures.

20.37.6.1. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Strict evidentiary rules do not apply and hearsay statements are admissible.

20.37.6.2. The accused may testify and present witnesses and documentary evidence. Witness testimony may be presented through sworn or unsworn statements, affidavits, depositions, prior testimony, stipulations of expected testimony, or telephone conference. The accused may not compel the production of a witness at Government expense unless the request is made to the hearing officer, in writing, before the hearing and the hearing officer determines:

20.37.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

20.37.6.2.2. The witness is available to testify; and

20.37.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g., written statements, affidavits, stipulations, or telephone conference).

20.37.6.3. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

20.37.6.4. The accused may be represented at the hearing by a civilian attorney or civilian representative of the accused's choice at no cost to the Government. The accused is also entitled to representation by either an ADC or military counsel of the accused's selection, if reasonably available. See [paragraph 15.6](#) The accused is not entitled to representation by more than one military counsel.

20.37.6.5. A court reporter records the hearing and prepares a summarized record of the proceeding. The record includes a summary of the evidence presented and any objections or requests considered by the hearing officer.

20.37.6.6. The hearing officer submits a written report to the convening authority through the SJA, including a statement of the evidence relied upon to support the findings. If the hearing officer chooses to make the findings and statement of evidence on the record, transcribe them verbatim. The hearing officer forwards the report and/or record to the convening authority.

20.37.6.7. The convening authority takes final action on the hearing officer's findings and determinations. The convening authority may adopt, modify, or reject the hearing officer's findings and determinations. If the hearing officer's findings and determinations are not adopted, the convening authority specifies the evidence relied upon and the reasons for the decision.

20.37.6.8. If the convening authority determines payment of the fine is delinquent and the failure to pay is not due to indigence, the convening authority may order the sentence of contingent confinement executed. A sample order executing contingent confinement is provided on the VMJD. If the convening authority determines the accused has made good faith efforts to pay the fine, but cannot because of indigency, the sentence of confinement may not be executed. If electing not to execute confinement, the convening authority signs a supplemental order remitting contingent confinement. This supplemental order is attached to the ROT.

20.37.6.9. The convening authority's action taken should be forwarded through the SJA to the military judge for completion of a new EoJ, which must be attached to the ROT.

20.37.6.10. Forward to JAJM a copy of the summarized record of the contingent confinement hearing for each copy of the ROT required by DAFMAN 51-203.

Section 20H—Notification of Adjudged Sentence, EoJ

20.38. 14 Day Memorandum and 24 Hour Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade, a 24 Hour Memorandum ([paragraph 20.38.2](#)) is required. In such cases, if the EoJ is not complete within 14 days, both a 14 Day Memorandum ([paragraph 20.38.1](#)), and a 24 Hour Memorandum ([paragraph 20.38.2](#)) must be accomplished and distributed. However, if the EoJ is completed within 14 days, a 14 Day Memorandum is not required.

20.38.1. **14 Day Memorandum.** The SJA of the office that prosecuted the case must send a memorandum 14 days after the sentence is announced or within 24 hours of the EoJ, whichever

is earlier, via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

20.38.2. 24 Hour Memorandum. If the EoJ is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the EoJ via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ).

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see **Section 23F**. In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111 (e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0).** Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104 (b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0).** Practitioners must use the format and checklists for the EoJ that is posted on the VMJD.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated and unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer to **paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See **Chapter 29** for further information on this requirement. Templates are located on the VMJD. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the

first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD within five duty days of completion.

Section 20J—Post-Trial Confinement

20.43. Entry into Post-Trial Confinement. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, with original signatures goes with the accused and is used to enter an accused into post-trial confinement.

20.44. Processing the DD Form 2707.

20.44.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The person directing confinement, typically the trial counsel, fills out block 7. The SJA fills out block 8 as the officer conducting a legal review and approval. The same person cannot sign both block 7 and block 8. Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

20.44.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner’s Correctional Treatment File.

20.44.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

20.44.4. Failure to comply with these procedural processes does not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

20.45. Effect of Pretrial Confinement. Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian (at the request of the military), or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (AFCCA 1995); and *United States v. Pinson*, 54 M.J. 692 (AFCCA 2001). An accused may also be awarded judicially ordered credit for restriction tantamount to confinement, prior NJP for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ. See e.g., *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989).

20.45.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the STR and EoJ.

20.45.2. Any credit for pretrial confinement should be clearly reflected on the STR, EoJ and DD Form 2707, along with the source of each portion of credit and total days of credit awarded.

20.45.3. Templates, instructions, and checklists are located on the VMJD.

20.46. Confinement Facility (R.C.M. 1101, 1102(b)(2)(F)).

20.46.1. AFSFC/FC, which oversees Air Force correctional facilities worldwide, selects the corrections facility for post-trial confinement and rehabilitation. Refer to AFMAN 31-115, Vol 1, for confinement rules and practices.

20.46.2. Correctional facilities other than those in the Air Force Corrections System may be used to confine inmates. AFSFC/FC sends detailed instructions covering selection of inmates for these assignments, details of transfer, and other administrative matters. The GCMCA of an inmate transferred to such a facility exercises the same responsibilities as those assigned in this chapter to AFDW/CC, for inmates in the Air Force Corrections System.

20.46.3. If a military confinement facility is not reasonably available, then the installation commander may authorize confinees to be placed in civilian correctional facilities in accordance with guidelines prescribed in AFMAN 31-115, Vol 1.

Section 20K—Preparing and Certifying the ROT (R.C.M. 1104)

20.47. Transcription Requirements. Transcription occurs simultaneous to the other post-trial phases (i.e. STR, CADAM, and EoJ). The transcript is not required before EoJ. Once the transcript is certified, it is attached to the ROT. For additional guidance, see DAFMAN 51-203.

20.47.1. **Verbatim Transcripts.** A certified verbatim transcript is required in cases that result in a dismissal, punitive discharge, or confinement for more than six months. **(T-0).** See R.C.M. 1114(a).

20.47.2. **Summarized Transcripts.** A certified summarized transcript is required for all other cases. For cases resulting in a full acquittal, mistrial, dismissal of all charges, or cases otherwise terminated without findings an abbreviated summarized transcript may be completed. See the VMJD for further details. A verbatim transcript satisfies the requirement of a summarized transcript.

20.47.3. **Certification.** Prior to certification of the transcript by the court reporter, the court reporter must forward the transcript to the trial counsel, who examines it for accuracy and signs a memorandum verifying the examination was accomplished. **(T-1).** A sample certification is located in AFMAN 51-203. The SJA must generally permit the defense counsel the reasonable opportunity to examine the transcript before certification. The transcript must be certified by the court reporter(s) who were detailed to the proceeding and included in the ROT prior to forwarding for appellate review. **(T-0).** For certification requirements, refer to DAFMAN 51-203.

20.47.4. Following certification of the transcript, the court reporter shall notify trial counsel and the case paralegal that the transcript is ready for inclusion in the ROT. The court reporter must ensure, and the case paralegal must verify, that sealed exhibits, classified information and closed sessions are properly sealed in accordance with R.C.M. 1112(e)(3) and DAFMAN 51-203. **(T-0).**

20.48. Preparing and Certifying the ROT in GCMs and SPCMs. The Court Reporter certifies the ROT after the military judge completes the EoJ and enters it into the record. The case paralegal or trial counsel must promptly send a copy of the EoJ to the court reporter. **(T-0).** See R.C.M.

1112(b)(9). Failure to promptly provide the EoJ to the court reporter will delay post-sentencing processing and the certification of the ROT. See DAFMAN 51-203. For SCMs, see [Chapter 23](#), DAFMAN 51-203, and R.C.M. 1305.

Section 20L—Service and Forwarding of the ROT (R.C.M. 1104; 1112(e))

20.49. Service of the ROT Generally.

20.49.1. Upon certification of the transcript and the ROT, the SJA causes a copy of the certified ROT to be served on the accused and any eligible victim(s) in accordance with the below guidance and R.C.M. 1112(e) and obtains proof of service or substitute service in accordance with DAFMAN 51-203. Provide only the ROT items listed in R.C.M. 1112(b). **(T-0)**. Do not provide the ROT attachments listed in R.C.M. 1112(f). **(T-0)**.

20.49.2. Mandatory Substitution of Transcript for Recording. Further, do not provide the accused or victim(s) with a copy of the audio recording of open proceedings. Instead, replace the audio recording with a redacted copy of certified transcript.

20.49.3. Where this section calls for redactions, those redactions shall be made to copies of the ROT provided to the accused and victim(s) only. Legal offices shall not redact an original ROT or any copies provided for appellate review.

20.50. Serving the ROT on the Accused.

20.50.1. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the accused. The accused's own personal information does not have to be redacted from the accused's copy.

20.50.2. The SJA must obtain proof of ROT service on the accused, or substitute service, and include it as an attachment to the ROT. **(T-0)**. See R.C.M. 1112(e)(2) and DAFMAN 51-203.

20.50.3. Members Confined at the United States Disciplinary Barracks (USDB) at Fort Leavenworth. Forward a copy of the certified ROT to the USDB. If the ROT is not certified at the time of inmate transfer, contact the USDB's DAF Liaison at DSN: 585-3626, OR COMM: (913) 758-3626. Once the ROT is certified, mail the ROT, via certified mail, to the USDB, ATTN: USAF Liaison, 1301 N. Warehouse Rd, Fort Leavenworth, KS 66027-2304. Notify the liaison upon shipment and provide them certified mail number.

20.51. Serving the ROT on Eligible Victim(s).

20.51.1. The following victim(s) are entitled to a copy of the ROT upon certification:

20.51.1.1. The victim of an offense of which the accused was charged if the victim testified during the proceedings, without regard to the verdict, automatically receives a copy of the ROT.

20.51.1.2. A victim named in a specification who did not testify at trial receives a copy of the ROT upon request, regardless of the verdict.

20.51.2. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the victim(s). The victim's own personal information does not have to be redacted from the victim's copy. However, the personal information of other witnesses and victims must be redacted. Additionally, information about

the accused that would normally be protected by the Privacy Act must also be redacted. (T-0).

20.51.3. The SJA must ensure that eligible victims are notified of the opportunity to receive a copy of the ROT. (T-0). A template notification is located on the VMJD. If the victim waives receipt of the ROT, the SJA must document that waiver in writing and attach it to the ROT. The SJA must obtain proof of ROT service on the victim, or substitute service, and include it as an attachment to the ROT. See R.C.M. 1112(e)(2) and DAFMAN 51-203.

20.52. Forwarding the ROT. After the ROT is complete, the servicing SJA or convening authority's SJA forwards the original ROT and required copies for post-trial review. See DAFMAN 51-203 for in-depth instructions on forwarded ROTs.

20.52.1. SCMs requiring Article 64, UCMJ, review and GCM or SPCMs requiring Article 65(d), UCMJ, review are forwarded to the GCMCA's SJA using the most cost-effective method that provides for means of tracking. See [Section 24D](#).

20.52.2. All other cases are forwarded to JAJM; this includes cases resulting in an acquittal or terminated without findings (e.g., mistrial or dismissal of all charges).

20.52.3. Incomplete ROTs (e.g., records of trial that are missing documents) should not be forwarded to JAJM. Incomplete ROTs will be returned to the responsible legal office and will not be considered transferred to JAJM for purposes of metrics and milestones.

Section 20M—Excess Leave

20.53. Involuntary (Required) and Excess Leave.

20.53.1. The convening authority will place an accused that either had no confinement adjudged or already completed the period of confinement on involuntary excess leave while awaiting appellate review of an unsuspended punitive discharge. (T-0). See Article 76a, UCMJ. For ARC-specific guidance, see [Chapter 3](#).

20.53.2. Members with an adjudged sentence that includes a punitive discharge may volunteer to be placed on excess leave pending the convening authority's review. If the convening authority does not reduce, commute or suspend the punitive discharge, the accused's voluntary excess leave status is terminated and the accused is placed on involuntary excess leave. If the convening authority reduces, commutes or suspends the punitive discharge, the accused is returned to duty; however, if the member faces involuntary separation, consult 10 U.S.C. § 1149.

20.53.3. When an approved sentence includes unsuspended confinement, the convening authority may not place the accused on either voluntary or involuntary excess leave unless the confinement has been served, remitted, or deferred.

20.53.4. An accused who has accrued leave when required to take excess leave may elect to either (1) receive pay and allowances during the period of accrued leave and then continue on unpaid excess leave, or (2) receive payment for the accrued leave as of the day excess leave begins and serve the entire period on unpaid excess leave.

20.53.5. If the accused's sentence to a punitive discharge is set aside or disapproved upon appellate review, the accused is entitled to pay and allowances for the period of required excess

leave unless a rehearing or new trial is ordered and a punitive discharge results from the rehearing. The amount of pay and allowances is reduced by the amount of income, unemployment compensation, and public assistance benefits received by the accused from any government agency during the period of excess leave.

20.53.6. The convening authority must cause the member's status to be changed to excess leave upon completion of a sentence to confinement where the member's unsuspended punitive discharge is still pending appellate review. The procedures for doing so can be found in [paragraph 20.56](#) Such involuntary excess leave may continue until the date the discharge is executed, unless terminated at any earlier date. A template notification to the member is located on the VMJD.

20.53.6.1. USAFA cadets may request voluntary excess leave ("administrative turnback") pending investigation or military justice action. In the event that a cadet is already on voluntary excess leave following a court-martial, a subsequent notification of involuntary excess leave is not required. However, if a USAFA cadet requests to return from voluntary excess leave while pending appeal (following adjudication of punitive discharge), involuntary excess leave paperwork must be processed in accordance with this chapter.

20.54. Excess Leave for Accused Assigned Outside the Continental United States. When a convening authority directs excess leave for an accused serving in an overseas area at the time excess leave is directed, the convening authority will direct reassignment to the force support squadron at the base nearest the appellate leave address provided by the accused. The convening authority may issue this direction through the SJA if appellate leave is provided for in the CADAM.

20.54.1. An accused may go directly to a designated leave address without reporting into the gaining unit. Before departure, the accused determines whether to physically report into the gaining unit.

20.54.2. The losing commander, consistent with the accused's election, directs the accused to travel from the overseas location to either the appellate leave address or the gaining unit as soon as possible after completion of out-processing. After arrival, the accused commences taking accrued leave, if so elected, and any required excess leave.

20.54.3. The accused will be considered assigned to the force support squadron at the gaining base on the date the member physically reports to the unit or, in cases where the accused does not physically report to the gaining unit, the date determined by the local force support squadron's personnel relocations element based upon the accused's departure date and travel time.

20.54.4. Overseas members may provide an ordinary or voluntary leave address in an OCONUS state or territory of the United States (e.g., Alaska, Hawaii, Guam) and HQ AFPC may assign the member to the force support squadron nearest such leave address. Overseas members assigned to units in foreign countries when placed on involuntary excess leave must provide an appellate leave address in a state or territory of the United States and will be reassigned to a force support squadron at the base nearest the appellate leave address. Overseas members in foreign countries at the time they are placed on involuntary excess leave will be required to depart the foreign country.

20.55. Excess Leave Procedures.

20.55.1. When the convening authority orders an accused to take excess leave, the convening authority (or the SJA, if the convening authority so directs in the CADAM) sends the accused a letter, directing the excess leave and informing the accused of entitlements, status and responsibilities while on excess leave. The SJA for the convening authority directing excess leave ensures a signed copy of this letter, with the accused's receipt and any subsequent address changes, is sent to the servicing force support squadron. A copy of all excess leave letters must be sent to JAJM and JAJA. In cases of an accused being reassigned from overseas, a copy of the letter must also be sent to the SJAs of the SPCMCA and GCMCA of the gaining unit and the gaining, or excess leave, FSS/CC. The format for the letter is available on the VMJD.

20.55.2. Action to place the accused on voluntary or involuntary excess leave must comply with *Joint Travel Regulations*, AFI 36-3003, *Military Leave Program*; DAFI 36-2110; AFMAN 36-2102, *Base-Level Relocation Procedures*; and AFMAN 31-115, Vol 1, *Air Force Corrections System*. Ensure AMJAMS is updated to reflect the accused's appellate leave address and the base nearest the address when the accused was reassigned.

20.56. Travel of Personnel Awaiting Completion of Appellate Review. An accused involuntarily placed on excess leave while awaiting completion of appellate review of a court-martial sentence to a punitive discharge or dismissal may be provided travel or transportation in kind, according to the *Joint Travel Regulations*. Ensure a special travel order is published in the "A" series if the court-martial convening authority directs involuntary appellate (excess) leave according to AFI 36-3003, *Military Leave Program*, and this instruction. If the accused's court-martial sentence is disapproved or set aside, and the member is restored to duty, the member is authorized travel or transportation in kind, according to the *Joint Travel Regulations*. In such cases, publish an "A" Series Travel Order in accordance with the publishing directive.

Section 20N—Post-EoJ Action by the Convening Authority

20.57. General Provision. In accordance with R.C.M. 1109, the convening authority may take action on the sentence in certain cases after the EoJ is complete.

20.58. Requirement for Additional CADAM. In any case where the convening authority takes action on the sentence subject to this section, the convening authority must issue a new CADAM. (T-0). See also R.C.M. 1109(g)(2).

20.59. Procedures. Once the additional CADAM is complete, the convening authority submits it to the servicing legal office who shall forward the CADAM to the Chief Judge, JAT, who will then ensure it is attached to the record of trial. (T-0).

20.60. Service on Accused and Any Victims. In accordance with R.C.M. 1109(h), the additional CADAM must be served on counsel for the accused, if represented, and counsel for the victim(s), if represented. If either the accused or victim(s) are not represented by counsel, the additional CADAM will be served directly on the accused and victim(s).

20.61. Requirement for Additional EoJ. The Chief, JAT, or designated military judge must then execute an additional EoJ after receipt of the CADAM. (T-0). See R.C.M. 1109(g)(2) and (h). The EoJ will then be forwarded to the servicing SJA for execution of a new first indorsement and distribution in accordance with the STR/EoJ Distribution List on the VMJD.

Chapter 21

CORRECTING OR MODIFYING POST-TRIAL PAPERWORK AND THE RECORD OF TRIAL

Section 21A—Correcting the STR and First Indorsement

21.1. Contents of the STR. The prescribed STR form contains data required by R.C.M. 1101 and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.2. Administrative Errors. Errors to administrative data listed on the STR but not required under R.C.M. 1101 (e.g., the member's SSN, rank, date, etc.) may be corrected on the STR in the manner prescribed in [Section 21E](#) at any time.

21.3. First Indorsement. The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the STR and first indorsement in accordance with [Section 21E](#).

21.4. Errors Identified Prior to EoJ. Errors on the STR identified prior to the EoJ are corrected in accordance with R.C.M. 1104(b). **(T-0).**

Section 21B—Correcting the Convening Authority's Decision on Action.

21.5. Contents of the Convening Authority's Decision on Action Memorandum. The prescribed CADAM includes the convening authority's action (or decision to take no action) as well as other administrative matters. Such administrative matters include ordering the member on appellate leave. These matters are included in the memorandum in order to provide the accused notice of any administrative requirements (e.g., appellate leave) executed by the convening authority.

21.5.1. Errors in the Memorandum. Errors in the CADAM that do not relate to or affect the convening authority's action and thus do not affect the EoJ on the findings or sentence will be corrected in the manner described in [Section 21D](#) after the EoJ has been signed. An example of such an error is any error in the reprimand language (to include failure to provide reprimand language in the memorandum).

21.6. Errors in the Action Language. Errors in the convening authority's action may be corrected prior to the EoJ in accordance with R.C.M. 1104(b). If corrections must be made after the EoJ, follow the procedures in [Section 21C](#).

21.6.1. Any corrections made by the convening authority must be memorialized in a subsequent CADAM and attached to the original CADAM. In the event corrections are made by the military judge in accordance with R.C.M. 1104(b)(2)(B), the military judge memorializes those corrections on the EoJ.

Section 21C—Correcting the EoJ

21.7. Contents of the EoJ. The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes SSNs, rank, and

other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.8. Errors Identified in the EoJ. Errors identified in the EoJ may only be corrected in accordance with R.C.M. 1111(c) and 1112(d). **(T-0).** If such errors are not corrected or are outside the scope of R.C.M. 1111(c), the errors may render the Record of Trial defective.

21.8.1. The military judge who presided over the trial has a limited ability to correct errors on the EoJ for 14 days after completion of the EoJ in accordance with R.C.M. 1111(c).

21.9. More than 14 Days after Initial Completion of the EoJ.

21.9.1. The Chief Trial Judge has been delegated the authority to modify EoJs in accordance with R.C.M. 1111(c)(2), and may detail a subordinate trial judge to modify an EoJ in a particular case.

21.9.2. The detailed military judge may make modifications to the EoJ consistent with the purposes of the remand.

21.9.3. TJAG, AFCCA, and Court of Appeals for the Armed Forces (CAAF) may also modify a judgment in the performance of their duties and responsibilities.

Section 21D—Method for Making Corrections

21.10. General Provision. If corrections are made to the first indorsement, STR, or EoJ, the corrected copy must be inserted in place of the original document and included in the original, JAJM copies 1 and 2, and office copies of the ROT. See the GCM/SPCM ROT Assembly Checklist on the VMJD. The original erroneous document and any prior corrected copies should be included in the ROT behind the corrected copies, before the audio recording. Corrected copies must be redistributed in accordance with the STR/EoJ Distribution list on the JAJM VMJD. If corrections are made to the first indorsement only, the STR, EoJ, and the first indorsement, must be redistributed in accordance with the STR/EoJ Distribution list on the JAJM VMJD.

21.11. Header. If changes are made to the first indorsement, STR, or EoJ form, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**). If changes are only made to the first indorsement, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**) only on the first indorsement. If multiple corrected copies are required, the corrected copies must be numbered (e.g., **SECOND CORRECTED COPY, THIRD CORRECTED COPY, FOURTH CORRECTED COPY**, etc.)

21.12. Making Corrections on the first indorsement, STR, and EoJ. Incorrect information should remain on the form but be struck through. The correct information should follow and be underlined. For example, if the accused’s sSSN was incorrectly listed on the STR, it should be corrected as follows: 111-22-4444 111-22-3333. **Note:** The date listed in the “Date” block on the STR and EoJ must be updated for each corrected copy. The date does not need to be struck through or underlined when updated. The date of the first indorsement should be updated to reflect the date the corrected first indorsement is signed. Corrected copies must be distributed in accordance with the STR/EoJ Distribution list on the JAJM VMJD.

21.13. Subsequent CADAM. If an error is identified in the original memorandum a subsequent CADAM must be accomplished in accordance with **Section 20E**. Subsequent memorandums must be distributed in accordance with **paragraph 20.26**, and both the original and subsequent memorandums must be included in the ROT.

21.14. Signatures. Corrected copies of the STR and EoJ must be signed by the same military judge or by the military judge directed by the Chief, Trial Judiciary and must indicate the date the judgment was initially entered into the record. Corrected copies of the first indorsement must be signed by the SJA or person Acting as the SJA.

Section 21E—Correcting the ROT

21.15. Defective or Incomplete ROT. A defective or incomplete ROT is corrected in accordance with R.C.M. 1112(d). A Certificate of Correction is prepared and certified by the military judge detailed to the case. After certification, provide a copy of the certificate to the trial counsel, defense counsel, and the accused. See AFMAN 51-203, paragraph 3.9.2.

21.15.1. Defective or incomplete records of trial may be forwarded by the superior competent authority to the Chief Trial Judge for correction. The Chief Trial Judge may detail a subordinate trial judge to correct the ROT in accordance with R.C.M. 1112(d)(2).

21.15.2. TJAG has designated the Chief, JAJM, a superior competent authority for purposes of declaring records of trial defective or incomplete and ordering corrections under R.C.M. 1112(d)(2). In the absence of the Chief, Military Justice Division, the Associate Chief, Military Justice Division, may exercise this authority.

21.15.3. Additionally, prior to the certification of a record of trial and its submission to the Appellate Records section, Staff Judge Advocates for the convening authority who convened the court are superior competent authorities for purposes of declaring records of trial defective or incomplete and ordering corrections under R.C.M. 1112(d)(2).

Chapter 22

COURTS OF INQUIRY (ARTICLE 135, UCMJ; MCM, PART I, PARAGRAPH 2(B)(3))

22.1. General. A court of inquiry is one of several investigative methods available to ascertain the facts of a matter of importance to the DAF. Only a GCMCA may convene a court of inquiry. A sample convening order is located on the VMJD. A court of inquiry should not be used when statute or regulation otherwise provides specific investigative procedures for a matter. A court of inquiry should not be used in place of an Article 32, UCMJ, preliminary hearing unless deemed necessary to produce evidence not otherwise reasonably available. If, however, a court of inquiry previously investigated the subject matter of an offense and the requirements of R.C.M. 405(a) are met, an Article 32, UCMJ, preliminary hearing may not be necessary prior to referring charges related to the previously investigated offense(s).

22.2. Personnel.

22.2.1. Members of the Court of Inquiry. A court of inquiry consists of three or more commissioned officers. The senior member is the president. All members should be senior to any person whose conduct is the subject of the inquiry.

22.2.2. Counsel for the Court of Inquiry. The convening authority appoints a judge advocate certified under Article 27(b), UCMJ, as legal advisor for the court of inquiry. The counsel assists the court of inquiry in matters of law, presenting evidence, and keeping the record.

22.2.3. Party to the Court of Inquiry. The convening authority may designate any person subject to the UCMJ whose conduct is subject to inquiry as a party to the court of inquiry. Any person subject to the UCMJ or employed by the DoD may also be designated a party if they have a direct interest in the inquiry and request the convening authority or the Court designate them as a party. Any person designated as a party is given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

22.2.4. Counsel for Parties. Military members who are party to the court of inquiry are entitled to representation by a defense counsel certified under Article 27(b), UCMJ. A party may request IMDC, subject to the rules of reasonable availability applicable to trials by court-martial. Any party may retain a civilian counsel at no expense to the government. See Article 135(c)(3), UCMJ; M.R.E. 305(d); R.C.M. 502(d)(3).

22.2.5. Reporter. A qualified court reporter, requested through JAT, records the proceedings and testimony and prepares a record of the proceedings for authentication by the president.

22.3. Procedures.

22.3.1. Convening Order. Use the sample format on the VMJD to convene a court of inquiry. The order appoints the members and counsel for the court of inquiry, states the subject of inquiry, designates known parties, and directs a report of findings of facts on the issues involved. If the convening authority desires conclusions and recommendations, include this in the order. The convening order should set the time and place of the court of inquiry. The convening order is provided to the parties and counsel.

22.3.2. Challenges. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court. The president of the court, with advice from the legal advisor, rules

on challenges. In the event the president of the court is challenged, the challenge must be forwarded to the convening authority for a determination.

22.3.3. **Oaths.** The members, counsel, reporter, and interpreter take an oath or affirmation to faithfully perform their duties. Article 135(e), UCMJ. The president or counsel for the court of inquiry may administer oaths. Article 136, UCMJ.

22.3.4. **Procedures and Rules of Evidence.** The procedures and rules of evidence that apply to an Article 32, UCMJ, preliminary hearing apply to a court of inquiry.

22.3.5. **Witnesses.** The president of the court may issue subpoenas for civilian witnesses. R.C.M. 703(g)(3)(D). All witnesses testifying before a court of inquiry do so under oath or affirmation. Members of the court of inquiry, the counsel to the court of inquiry, and the counsel to a party may examine all witnesses. A party cannot be compelled to testify, but may testify under oath subject to cross-examination or make an unsworn statement.

22.3.6. **Written Report by the Court of Inquiry.** The court of inquiry makes findings of fact, but may not make conclusions of law and recommendations, unless required to do so by the convening authority. Dissenting views are authorized.

22.3.7. **Record of the Court of Inquiry.** Each court keeps a record of its proceedings. The record is authenticated in accordance with Article 135(h), UCMJ. The president forwards the authenticated record to the convening authority, who obtains a legal review from the servicing SJA. The SJA's legal review includes a summary of the proceedings, a determination of the legal sufficiency of the proceedings, and a recommended action. If the record of the proceedings is to be used as a substitute for an Article 32, UCMJ, preliminary hearing, it must comply with the requirements of R.C.M. 405(l).

22.3.8. **Revision.** The convening authority may reconvene the court of inquiry and direct it to take additional action as the convening authority deems necessary.

Chapter 23

SUMMARY COURTS-MARTIAL

Section 23A—General Guidance for SCMs

23.1. Summary Court-Martial Guide. For additional guidance on processing summary courts-martial, refer to the Summary Court-Martial Guide on the VMJD.

23.2. Non-Criminal Forum. SCMs are not criminal forums. SCMs may be used to adjudicate minor offenses. See MCM, Part V.1(e). Convictions at SCMs do not constitute criminal convictions. **Note:** However, a finding of guilty at an SCM still has criminal indexing implications if for a qualifying offense under federal law or Air Force policy. See **paragraph 29.33.2.2**; AFMAN 71-102; 18 U.S.C. § 922; and 27 C.F.R. § 478.11, *Meaning of terms*.

23.3. Former Jeopardy Considerations. An SCM triggers former jeopardy under Article 44, UCMJ in the same manner as an SPCM or GCM.

23.4. Lack of Jurisdiction of SCM. SCMs do not have jurisdiction over officers. Only enlisted members may be tried by SCM. SCMs do not have jurisdiction over capital offenses. SCMs do not have jurisdiction over any offense with a mandatory minimum sentence, to include penetrative sexual assault offenses or attempts or conspiracy to commit such offenses.

23.5. Right to Object to Trial by SCM. Before arraignment, an accused may object to being tried by an SCM even if they previously refused punishment under Article 15, UCMJ, and demanded trial by court-martial. If an accused objects to trial by SCM, the charges may be dealt with by any means listed in R.C.M. 401. See R.C.M. 1303.

23.6. Punishment Limitations. The maximum penalty that can be adjudged in a summary court-martial is confinement for 30 days, forfeiture of two-thirds pay per month for one month, and reduction to the lowest pay grade. In the case of enlisted members above the fourth enlisted pay grade, summary courts-martial may not adjudge confinement, hard labor without confinement, or reduction except to the next pay grade. R.C.M. 1301(d)(1) & (2).

23.7. Victims' Rights. "Victim" is defined as any person who has suffered a direct, physical, emotional, or pecuniary harm as a result of the commission of a UCMJ offense. For discussion of applicable rights at an SCM, see Article 6b, UCMJ, and AFI 71-102.

Section 23B—Composition of an SCM

23.8. Summary Court-Martial Officer (SCMO). An impartial, active-duty DAF commissioned officer presides over an SCM as the SCMO. A Reserve commissioned officer on active duty or an ANG commissioned officer on active duty in federal service may serve as an SCMO. The SCMO must be impartial. Before appointing an officer to serve as an SCMO, the convening authority should consider the appointment in the context of the officer's normally assigned duties and assess whether the SCMO's impartiality could be questioned based on the SCMO's relationship with the case, the parties, and the base legal office.

23.8.1. If the SCMO is not a certified judge advocate, an impartial legal advisor must be made available to the SCMO. This may be done telephonically. Whether a legal advisor is impartial should be considered in the context of the officer's normally assigned duties and relationship

with the case, the parties, and the base legal office. A SCMO may seek advice from a judge advocate or legal officer on questions of law, but may not seek advice from any person on factual conclusions that should be drawn from evidence or the sentence that should be imposed. The SCMO has the independent duty to make these determinations.

23.9. Defense Counsel. The member has a right to consult a lawyer before making any decisions, and a lawyer may assist the member throughout the proceedings. Civilian counsel, qualified under R.C.M. 502(d)(3), may represent the accused at the accused's own expense if it will not cause unreasonable delay. **Note:** If not represented by counsel, convictions at SCMs generally cannot later be admitted as a previous conviction in a general or special court-martial. See [paragraph 19.15.4](#).

23.10. Government Counsel. A properly designated judge advocate may be detailed to represent the government. See R.C.M. 1301(e).

Section 23C—Convening an SCM

23.11. Convening Authority.

23.11.1. A GCMCA or SPCMCA may convene an SCM. The commander of a detached squadron or other detachment may convene an SCM, but only with the express authorization of the superior DAF GCMCA. See R.C.M. 1302 and AFI 51-201.

23.11.2. Convening Authority as Accuser. If the convening authority is the accuser, the convening authority may forward the charge(s) to a superior authority with a recommendation to convene an SCM. This is not mandatory and jurisdiction is not affected if the case is not forwarded. See R.C.M. 1302(b). The convening authority may not, however, sit as the SCMO unless there are no other commissioned officers in the command or detachment. See R.C.M. 1301(a) and R.C.M. 1302(b).

23.11.3. SCMO as Accuser. An accuser is not impartial and should not be detailed as the SCMO. If, however, the accuser is the only commissioned officer in the command or detachment, the accuser may be detailed as the SCMO. See R.C.M. 1302(b).

23.12. Detailing Summary Courts-Martial. An SCM is detailed by a convening order. The convening order is a special order prepared in accordance with R.C.M. 504(d) signed by the convening authority. For composition of an SCM, refer to R.C.M. 1301(a). See the SCM Guide and sample summary courts-martial convening order on the VMJD.

23.12.1. All SCMs are constituted by special orders that are numbered consecutively on a fiscal year basis, starting with the number 1, and using an AC series letter prefix. See [paragraph 14.10.3](#).

23.12.2. When generating the convening order, the following single paragraph is a model to be used for the convening authority's signature in an appropriately formatted AC series special order: "Pursuant to authority contained in Special Order G-20-001, Department of the Air Force, dated 5 December 2019, a summary court-martial is hereby convened. I reviewed the charge sheet and evidence in the case of *United States v. AIC John H. Doe*. It may proceed at Beale AFB, California, to try such persons as may be properly brought before it. Lt Col Will I. Judge, 30 SW/DO, is detailed as the Summary Court-Martial Officer."

23.12.3. The convening authority signs the convening order. The SJA may sign the DD Form 458 on the convening authority's behalf, if the convening order is signed by the convening authority; otherwise, the convening authority signs the referral section on the DD Form 458.

Section 23D—Preparing the DD Form 2329, Record of Trial by Summary Court-Martial

23.13. DD Form 2329. The DD Form 2329, *Record of Trial by Summary Court-Martial*, is the key component to the record of trial (ROT) in a SCM. The SCMO must use the DD Form 2329 throughout the proceedings and must sign it immediately after trial.

23.14. Completing the DD Form 2329. The legal office should prepare Blocks 1-3c and Block 8 through the "Charge(s)" section prior to the court. The SCMO will complete all of the remaining blocks, except for Block 13 (convening authority action). The legal office must ensure the entirety of the DD Form 2329 is correct and accurately reflects the specifications from the charge sheet, pleas, findings, and sentence (as announced at the court-martial)prior to the SCMO's certification. A sample DD Form 2329 is on the VMJD.

23.14.1. Block 1. Accused Information. List name of accused, current rank, current unit/organization and DOD ID No.

23.14.2. Block 2. Convening Authority's name, rank, "position" should be "commander", and organization (unit, base, and state).

23.14.3. Block 3. SCMO's name, rank, and unit/organization (unit, base, and state). Below the personal information of the SCMO, enter the UCMJ Articles the accused is being charged with. The accused must circle whether or not they refuse the SCM and must sign and date this portion.

23.14.4. Block 4. Add the date the SCMO held any preliminary proceedings at which the SCMO provided the charge sheet to the accused. If there were no preliminary proceedings, then add the date of the court and immediately provide a copy of the charge sheet to the accused. The SCMO will complete the block by marking in the "Yes" or "No" block.

23.14.5. Block 5. The SCMO will complete these blocks by marking in the "Yes" or "No" block.

23.14.6. Block 6. Add the date the court martial proceeding (or preliminary proceeding) began. The SCMO must indicate whether or not the accused objected to trial by SCM and must have the accused initial the designated box.

23.14.7. Block 7. In Block 7a, the SCMO will add whether or not the accused was represented by counsel. If represented, the SCMO will add the name and rank of the defense counsel and their qualifications in Blocks 7b-d.

23.14.8. Block 8.

23.14.8.1. In the "Charges and Specifications" column, include the charge and article number, skip a line and then add the specification. The text of the specification can be copied directly from the charge sheet, or you may omit personal data (e.g. name, rank, unit, etc.) but the rest of the specification should match the charge sheet. For example: "Did, at or near Dover AFB, DE, on or about 1 January 2019, wrongfully use phencyclidine, a

Schedule II controlled substance.” If more room is needed for Charges and Specifications, use a continuation sheet.

23.14.8.2. In the “Pleas” column the SCMO indicates how the accused pled. In the “Findings” column the SCMO indicates the findings of the SCMO as to each charge and specification. [guilty (“G”); not guilty (“NG”); not guilty, but guilty of a lesser included offense (“NG, but guilty of the LIO of Art. X”); guilty by exceptions (“G, except the word(s) “____,” of the excepted word(s), NG”); or guilty by exceptions and substitutions (“G, except the word(s) “____” and substituting therefor the word(s) “____,” of the excepted word(s), NG, of the substituted word(s), G”)]

23.14.8.2.1. There must be a plea and finding annotated for each charge and specification.

23.14.9. Block 9. The SCMO annotates the sentence as adjudged.

23.14.9.1. Any forfeitures must be announced and annotated in a whole dollar amount.

23.14.9.2. Annotate any pretrial confinement credit and/or illegal pretrial confinement credit in this block.

23.14.10. Blocks 10-11. The SCMO must mark “Yes” or “No”.

23.14.11. Block 12. The SCMO must sign and date this block. Before certifying, the SCMO must coordinate with the base legal office to ensure the DD Form 2329 is prepared correctly and that all exhibits are accounted for.

Section 23E—Conducting the SCM (R.C.M. 1304)

23.15. Procedures. See R.C.M. 1304 and the SCM Guide for detailed procedures to be followed when conducting an SCM. The SCM Guide, found on the VMJD, also includes the script to be used for such a proceeding.

Section 23F—Post-Trial Procedure (R.C.M. 1306)

23.16. Required SJA first indorsement to DD Form 2329. After trial, upon certification of the DD Form 2329, the SJA must complete the first indorsement to the DD Form 2329 located on the VMJD. The purpose of the indorsement is to identify any criminal indexing requirements as a result of the offenses and notify the appropriate agencies.

23.17. Distribution of the DD Form 2329 following trial. Immediately following trial, provide a copy of the SCMO certified DD Form 2329 to the accused and obtain a receipt. Provide a redacted copy to any victim upon request. Additionally, distribute the DD Form 2329 and first indorsement, regardless of verdict, in accordance with the SCM Distribution List on the VMJD.

23.18. Matters Submitted by the Accused. The accused may submit clemency matters to the convening authority within seven days after the sentence is announced. The convening authority may grant an extension of up to 20 additional days for good cause. Any matters submitted by a victim must be served on the accused, and the accused has five additional days to rebut those matters. See R.C.M. 1106(d). Templates are located on the VMJD.

23.19. Matters Submitted by the Victim(s). Any victim, as defined in this chapter, whose allegation resulted in a conviction may submit matters for the convening authority’s consideration

within seven days after the sentence is announced. The convening authority may grant an extension of up to 20 additional days for good cause. The legal office must immediately serve the victim's matters on the accused. The SCMO shall inform eligible victims of their right to submit matters. See R.C.M. 1106A. A template notification letter is located on the VMJD.

23.20. Rehearing. The convening authority may order a rehearing as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only. See R.C.M. 1306(c) for further guidance.

23.21. Convening Authority Action. After the periods for submission of matters by the accused and victim expire (or are waived), the convening authority shall take action in accordance with R.C.M. 1306(b). Action by the convening authority will be annotated on Block 13 of DD Form 2329. The convening authority shall consider matters submitted by the accused and victim.

23.21.1. The convening authority may take action on the findings, but it is not required. See Article 60b(a), UCMJ, and R.C.M. 1306.

23.21.2. The convening authority shall approve the sentence or take other action detailed in Article 60b(a)(1), UCMJ. The action must state whether the adjudged sentence is approved. If only part of the sentence is approved, the action must state which parts are approved. See R.C.M. 1306(d). Sample SCM action language is located on the VMJD.

23.21.3. If the SCMO expresses forfeitures as a fraction, the convening authority may correct this error by expressing forfeitures in whole dollar amounts in the convening authority action.

23.21.4. There is no requirement to provide written legal advice to the convening authority prior to action. Any written legal advice on action must be served on the accused and defense counsel.

23.22. Annotating Convening Authority Action. Annotate the convening authority's action in Block 13 of the DD Form 2329. The convening authority, not a party acting on behalf of the convening authority, must sign Block 13 directly. If the entirety of the action will not fit into the block, then mark "See attached" in Block 13, and do not complete the rest of the block. Instead, put the entire action on a separate sheet of bond paper, signed and dated by the convening authority. A sample is provided on the VMJD.

23.22.1. SJA Second Indorsement to the DD Form 2329. Upon convening authority's action, the SJA must complete a Second Indorsement to the DD Form 2329.

23.23. Distribution of the DD Form 2329 after Action. Immediately following convening authority's action, distribute DD Form 2329, any separate page action, first, and second indorsements in accordance with the SCM Distribution List on the VMJD.

23.24. Serving Convening Authority Action on the Accused and Victim. The SJA must serve the convening authority's action on the accused and victim. **(T-0).** If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. **(T-0).** Service of the record of trial on the accused (which includes the action) will satisfy this requirement. If any subsequent action is required, it, along with the court-martial order, must be served on the accused and the victim.

23.25. Correcting Convening Authority Action. If errors are subsequently identified in the action after the convening authority completes Block 13, then correct the error by withdrawing the original action and substituting a new one. The convening authority (including successors)

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completes the new action on a separate page using the following language: “the action taken by me (or my predecessor) on (date) is withdrawn, and the following is substituted therefor: (insert new action).” After the convening authority signs the new action, the SJA must sign and publish a court-martial order, and distribute the order to the same individuals who received the DD Form 2329. Samples are provided on the VMJD.

Section 23G—Preparing and Serving the ROT and Post-Trial Review

23.26. See DAFMAN 51-203.

Chapter 24

APPEALS, REVIEWS, AND PETITIONS FOR NEW TRIAL

Section 24A—General Guidance

24.1. Applicability Statement. For cases referred before 1 January 2019, apply the appellate procedures that were in place prior to 1 January 2019. These procedures are available on the VMJD. Contact JAJM for further assistance. In all other cases, including straddling cases, apply the appellate procedures and guidance in this chapter. **Note:** In straddling cases, the government does not have the authority to appeal a sentence under R.C.M. 1117 in this circumstance.

Section 24B—Appellate Defense Counsel

24.2. Accused's Request for Appellate Defense Counsel (Article 70, UCMJ).

24.2.1. Include an AF Form 304, *Request for Appellate Defense Counsel*, signed by the accused in every ROT forwarded to AFCCA, to include cases referred by TJAG.

24.2.2. The accused's trial defense counsel assists the accused in filling out the form, obtains the accused's signature, and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement.

24.2.3. The AF Form 304 provides the accused's preferred mailing address (appellate leave address, etc.) for all appellate review correspondence when the accused is not in a confinement facility. An adequate address must be obtained even if the accused waives appellate review. Do not use addresses for the ADC or civilian defense counsel office(s), base organization, or on-base residence. An adequate address is one where the accused can be directly contacted.

24.2.4. If an accused's death sentence has been approved by the President pursuant to Article 57, UCMJ, and the accused seeks to file a post-conviction habeas corpus petition in federal civilian court, the accused may request a military defense counsel from TJAG. Upon receipt of the accused's request, TJAG will detail military counsel under Article 70(f), UCMJ, to represent the accused in such proceedings and any appeals.

24.3. Withdrawal of Request for or Declination of Appellate Defense Counsel.

24.3.1. The accused may decline appellate representation by checking the appropriate box on the AF Form 304.

24.3.2. If the accused initially declines appellate representation after sentence is announced, the accused must be given another opportunity to elect or decline appellate representation after the convening authority's decision on action is served upon the accused. **(T-0).** See *United States v. Xu*, 70 M.J. 140 (CAAF 2011) (Summary Disposition).

24.3.2.1. If the accused again declines appellate representation after receiving the action, include both versions of the AF Form 304 in the ROT (the one served on the accused immediately after trial and the other served on the accused after action).

24.3.2.2. In those instances where an accused's initial AF Form 304 indicates a waiver of appellate counsel, but a second AF Form 304 is not part of the ROT, the record will be returned to the servicing SJA for execution of this requirement.

24.4. Waiver/Withdrawal of Appellate Review (Article 61, UCMJ; R.C.M. 1115).

24.4.1. If an accused wishes to waive or withdraw from Article 66, UCMJ, appellate review, follow the procedures outlined in R.C.M. 1115. The request to waive or withdraw must be filed after the EoJ. The waiver or withdrawal should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*. **Note:** Ensure use of the correct version of DD Form 2330, which is dictated by referral date. See Appendix 13, MCM.

24.4.2. Once properly submitted, a waiver or withdrawal may not be revoked. A valid waiver or withdrawal of appellate review bars review by AFCCA. See Article 61(d), UCMJ. It does not prevent later submission of an Article 69(d), UCMJ application.

24.4.3. In the event of waiver, the base legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. See [paragraph 24.15](#).

24.4.4. In the event of withdrawal, appellate defense counsel must file a motion with the appropriate appellate court. Upon granting of the motion, the GCMCA SJA will be notified by JAJM to complete an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201 and a Certification of Final Review will need to be completed. See [paragraph 24.15](#) and [Chapter 27](#).

Section 24C—Appeals of Sentence by the United States (Art 56, UCMJ; R.C.M. 1117)

24.5. General Provision. With the approval of TJAG, the Government may appeal a sentence to AFCCA on the grounds that the sentence violates the law or is plainly unreasonable. See Article 56(d), UCMJ. The government may only file such an appeal if all specifications of which the accused was convicted allege offenses that were committed on or after 1 January 2019.

24.5.1. A Government appeal of the sentence must be filed within 60 days after the EoJ is complete. **(T-0).** Prior to filing a notice of appeal, the Government must receive convening authority concurrence, consult with JAJG, and receive TJAG approval through their functional chain. **(T-0).** The Government must reserve adequate time after coordination to allow JAJG to prepare the required appellate briefs within the 60-day window. **(T-0).**

24.5.2. To seek TJAG approval, the requesting legal office must submit to JAJG:

24.5.2.1. A statement of reasons that meets the requirements of R.C.M. 1117(c)(1)-(3) (**Note:** The statement of reasons may not include facts outside the record established at the time the sentence was announced.);

24.5.2.2. The EoJ;

24.5.2.3. The transcript of the proceedings or, if the transcript is not available at the time of the request, a summary of the evidence and facts established at the time the sentence was announced;

24.5.2.4. Convening authority concurrence, which may be established in the statement of reasons;

24.5.2.5. A block for JAJG coordination, which may be established in the statement of reasons; and

24.5.2.6. Documentation showing concurrence and coordination with the functional chain of command. This coordination may also be established in the statement of reasons.

24.5.3. Prior to acting, TJAG forwards the request to the military judge who presided over the proceedings for the purpose of allowing the military judge, the parties, and the victim(s) to make a submission addressing the statement of reasons in the Government's request. See R.C.M. 1117(c)(4).

24.5.3.1. The military judge shall establish the time for the parties and crime victims to provide such a submission to the military judge, and for the military judge to forward all submissions to TJAG. The military judge shall ensure that the parties have not less than seven days to prepare, review, and transmit such submissions.

24.5.3.2. Submissions under this paragraph shall not include facts beyond the record established at the time the sentence was announced under R.C.M. 1007.

24.5.4. Upon receiving TJAG approval, trial counsel may file a notice of appeal with the military judge consistent with R.C.M. 908(b).

24.5.5. After filing a notice of appeal, trial counsel requests JAJG file the appeal with AFCCA. In the request, trial counsel will identify the sentence to be appealed and include the following:

24.5.5.1. The statement of approval from TJAG; **(T-0)**.

24.5.5.2. The Government's request and statement of reasons; **(T-0)**.

24.5.5.3. Any submissions made by the military judge, the defense, or the victim(s); **(T-0)**.

24.5.5.4. Any other documentation required by JAJG.

24.5.6. JAJG decides whether to file the appeal with AFCCA, and notifies the requesting party and JAJM.

Section 24D—Judge Advocate Review of Summary Courts-Martial (Article 64, UCMJ; R.C.M. 1307)

24.6. Article 64, UCMJ, Overview. Every SCM resulting in a guilty finding receives an Article 64, UCMJ, review by the GCMCA legal office. See R.C.M. 1307.

24.7. Article 64, UCMJ, Review Requirements. An Article 64, UCMJ, review by a judge advocate is required in each SCM where there is a finding of guilty. **(T-0)**. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of lack of mental responsibility.

24.7.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate who conducts the review.

24.8. Disqualification.

24.8.1. A judge advocate who has acted in the same case as an accuser, PHO, SCMO, counsel, or who has otherwise acted on behalf of the prosecution or defense may not conduct the Article 64, UCMJ, review. **(T-0)**.

24.8.2. If the GCMCA acted as the convening authority for the SCM, then the GCMCA may take action subject to the limitations of R.C.M. 1307(c).

24.8.3. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 64, UCMJ, review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM or FLDCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is not an eligible convening authority in the command, or in the discretion of the MAJCOM or FLDCOM SJA, a judge advocate assigned to the MAJCOM or FLDCOM legal office may conduct the review. If the MAJCOM or FLDCOM is disqualified from conducting the review, then the MAJCOM or FLDCOM SJA may request another MAJCOM or FLDCOM to act. If agreement cannot be reached between MAJCOMs or FLDCOMs, contact JAJM for assistance in identifying a GCMCA to act on the case.

24.9. Form and Content of Article 64, UCMJ, Reviews.

24.9.1. Article 64, UCMJ, reviews should contain only those matters required in R.C.M. 1307(d). If no errors are alleged, the review will consist of a stamped or typed entry on the DD Form 490, cover of volume one of the original ROT, and on the DD Form 2329, *Record of Trial by Summary Court-Martial or separate page action*. The entry shall be entitled, "Article 64, UCMJ, Review," and shall consist of the conclusions required in Article 64, UCMJ, and R.C.M. 1307(d), the command unit designation of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

24.9.2. **Corrective Action Not Required.** If errors are alleged, the judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. **(T-0).** See R.C.M. 1307(d)(2). The review is prepared, dated and signed by the reviewer, covers the matters required by Article 64, UCMJ, and includes a statement that the findings and sentence are correct in law and fact. The review is attached to the ROT. The DD Form 490 and the DD Form 2329 are annotated with a typed or stamped notation consisting of the items required in [paragraph 24.9.1.](#)

24.9.3. Corrective Action Required.

24.9.3.1. If the judge advocate concludes that corrective action is required as a matter of law, the judge advocate's review will be in writing, dated and signed by the reviewer, and will address the matters required in R.C.M. 1307(d), and include the options of the GCMCA can take under R.C.M. 1307(f).

24.9.3.2. The judge advocate will prepare a supplemental order for the GCMCA to sign to enact the GCMCA's action on the review.

24.9.3.3. The GCMCA takes further action in accordance with R.C.M. 1307(f) and Article 64(c), UCMJ, and the review and action are included in the ROT. There will be no additional notation on the DD Form 490 and no additional notation on the DD Form 2329. The judge advocate's written review serves as the notation required by Article 64, UCMJ, and R.C.M. 1307(d).

24.9.3.4. If the judge advocate concludes that corrective action is required as a matter of law, and the GCMCA does not take action that is at least as favorable to the accused as that

recommended by the judge advocate, the ROT, Article 64, UCMJ, review, and convening authority action are forwarded to JAJM. JAJM will forward the record to JAJI for review under Article 69(a), UCMJ. See Article 64(c)(3), UCMJ, and R.C.M. 1307(g). **(T-0).** **Note:** In all other cases, the accused may petition TJAG for an Article 69, UCMJ, review after the Article 64, UCMJ, review is complete.

24.9.3.5. If the officer taking action under Article 64, UCMJ, orders a rehearing, the ROT, Article 64, UCMJ, review, and Article 64, UCMJ, action, if applicable, will be sent to the officer who convened the court-martial who determines whether a rehearing is practicable. See **Section 26A**. If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will coordinate with the officer presently exercising special court-martial jurisdiction over the accused. If the rehearing is found to be impracticable, the convening authority shall dismiss the charges. **(T-0).**

24.10. Finality of SCM. Except for cases requiring Article 69, UCMJ, review under R.C.M. 1307(g), SCMs are final under Article 76, UCMJ, upon completion of the judge advocate's review and any required action by the GCMCA. However, even after the SCM is final, the accused may petition TJAG to conduct a review under Article 69, UCMJ, to modify or set aside the findings of a sentence in whole or in part. In order to qualify for such a review, the accused must submit an application to TJAG, through JAJM, no later than one year after the completion of the Article 64, UCMJ, review. See R.C.M. 1201(h). **(T-0).**

24.11. Article 64, UCMJ, Review Distribution. After completing the Article 64 review and, when applicable, any action by the GCMCA, forward the original ROT and any supplementary orders to JAJM.

24.11.1. Provide a copy of the Article 64, UCMJ, review and any action taken by the GCMCA to the accused in person or via certified mail. **(T-0).** See R.C.M. 1307(f). If the GCMCA acted upon the case, provide a copy of the supplemental order to the accused in person or via certified mail. See R.C.M. 1307(f). If provided in person, obtain a receipt from the accused.

24.11.1.1. Attach the receipt or proof of mailing to the ROT.

24.11.2. Provide one copy each of the DD Form 2329 indicating compliance with Article 64(a), UCMJ, to the same parties listed on the SCM Distribution List, available on the VMJD. Distribute any supplemental order(s) to the same parties listed on the SCM Distribution List, available on the VMJD.

Section 24E—Review by TJAG of GCMs and SPCMs Not Appealed to the Air Force Court of Criminal Appeals (Article 65, UCMJ)

24.12. Overview. An Article 65(d), UCMJ, review is required for any GCM or SPCM not eligible for an automatic Article 66, UCMJ, appeal (i.e., where the confinement is less than two years and no punitive discharge or dismissal was adjudged) or when the accused failed to timely file, waived, or withdrew an Article 66, UCMJ, appeal to AFCCA.

24.13. Article 65(d), UCMJ, Review Requirements. Article 65(d), UCMJ, reviews are conducted by attorneys as designated in this chapter by TJAG.

24.13.1. In cases where the accused is sentenced to a term of confinement that is greater than six months but no more than two years and no punitive discharge or dismissal, the Article 65(d), UCMJ, review, if any, is completed by a judge advocate assigned to JAJI.

24.13.2. In all other cases, judge advocates assigned to the GCMCA legal office are designated to conduct Article 65, UCMJ, reviews unless all of the judge advocates within that office are disqualified. See R.C.M. 1201(a)-(g).

24.13.3. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 65(d), UCMJ, review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM or FLDCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is not an eligible convening authority in the command, or in the discretion of the MAJCOM or FLDCOM SJA, a judge advocate assigned to the MAJCOM or FLDCOM legal office may conduct the review. If the MAJCOM or FLDCOM is disqualified from conducting the review, then the MAJCOM or FLDCOM SJA may request another MAJCOM or FLDCOM to conduct the review. If agreement cannot be reached between MAJCOMs or FLDCOMs, contact JAJM for assistance.

24.13.4. A judge advocate who has acted in the same case as an accuser, PHO, member of the court-martial, military judge, counsel, or has otherwise acted on behalf of the prosecution or defense may not conduct the Article 65(d), UCMJ, review.

24.14. Cases Eligible and Ineligible for Appeal to AFCCA.

24.14.1. **Cases Eligible for Direct Appeal to AFCCA.** In accordance with Article 66(b)(1), UCMJ, an accused who is adjudged a sentence to confinement of more than six months but less than two years and is not adjudged a punitive discharge or dismissal has the right to submit a direct appeal to AFCCA. **Note:** If the accused in such cases does not file a timely Article 66, UCMJ, appeal, then the case will receive an Article 65(d), UCMJ, review by JAJI.

24.14.1.1. Base/NAF Procedures for Direct Appeal Eligible Cases.

24.14.1.1.1. After the ROT is complete, the original and one additional copy of the ROT must immediately be forwarded to JAJM. Failure to forward the ROT immediately will delay the provision of timely notice to the accused of their right to file a direct appeal.

24.14.1.1.2. No Article 65(d), UCMJ, review should be completed by the GCMCA legal office in these cases. JAJI will conduct the Article 65(d), UCMJ, review if the accused does not file a timely Article 66, UCMJ, appeal. See [paragraph 24.14.2](#).

24.14.1.2. JAJM Procedure.

24.14.1.2.1. After receiving the ROT and the required copy, JAJM will provide a copy of the ROT to JAJA, and notify the accused of their right to appeal in accordance with Article 65(c)(1), UCMJ, via certified mail. The accused will then have 90 days from the date on which the notice is postmarked to file an appeal.

24.14.1.2.2. If no appeal is filed, JAJM will provide the ROT to JAJI to conduct an Article 65(d), UCMJ, review in accordance with [paragraph 24.15](#). Once the review is complete, JAJI will notify the accused of the results of the review and any action taken by TJAG or the convening authority via certified mail. See R.C.M. 1201(g). JAJI will

complete distribution in accordance with [paragraph 24.16](#) JAJI will return the notification and the ROT to JAJM.

24.14.1.2.3. If an appeal is filed, JAJM will provide the original ROT to AFCCA and request an additional copy of the ROT for JAJG, and will serve such copy on JAJG upon receipt from the base. AFCCA will review the appeal and submit a notice of docketing to the appellant and appellate parties.

24.14.2. Cases Not Eligible for Automatic or Direct Appeal AFCCA. Such cases are those with confinement for six months or less and no punitive discharge or dismissal. If a case is not eligible for automatic or direct appeal to AFCCA, the Article 65(d), UCMJ, review is performed by a judge advocate assigned to the GCMCA legal office.

24.14.2.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate to conduct the review. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of a lack of mental responsibility.

24.14.2.2. If the judge advocate conducting the review recommends corrective action, the record shall be forwarded to JAJM. JAJM will forward such record to JAJI for action by TJAG, who may set aside the findings or sentence in whole or in part. See Article 65(e), UCMJ, and R.C.M. 1201(f). Any action taken by TJAG in accordance with Article 65(e), UCMJ, must be included in the ROT and memorialized in the Certification of Final Review.

24.15. Form, Content, and Distribution of Article 65(d), UCMJ, Judge Advocate Reviews.

24.15.1. Article 65(d) reviews will contain only those matters required by R.C.M. 1201(d) & (e). In those cases in which no corrective action is required by TJAG, the review will consist of a stamped or typed entry on the original DD Form 490, ROT cover of volume one of the original ROT, and on the EoJ for non-punitive discharge SPCMs and GCMs. The entry shall be entitled "Article 65(d), UCMJ, Review," and shall consist of the conclusions required in Article 65(d)(2), UCMJ, the unit designation of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

24.15.2. For cases in which appellate review has been waived or withdrawn, the Article 65(d), UCMJ, review will contain only those matter required by R.C.M. 1201(e) and will be annotated according to 24.15.1 except it will consist of the conclusions required in Article 65(d)(3), UCMJ. **Note:** In officer/cadet cases where a dismissal has been adjudged, the ROT and Article 65(d), UCMJ, review must be forwarded to JAJM, who will route the record and review to JAJI for Secretarial action on the dismissal.

24.15.3. Corrective Action Not Required. If errors are alleged, the judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. **(T-0).** The review is prepared, dated and signed by the reviewer, covers the matters required by Article 65(d)(2), UCMJ, and includes a statement that the findings are correct in law and fact. The review is attached to the ROT. The Article 65(d), UCMJ, review will be annotated as required by [paragraph 24.15.1](#).

24.15.4. Corrective Action Required. When the review indicates that corrective action may be required, the GCMCA SJA forwards the review, the ROT and attachments to JAJM for

docketing. JAJM will forward the ROT to JAJI for action by TJAG, in accordance with Article 65(e), UCMJ, and R.C.M. 1201(f). Any action taken by TJAG in accordance with Article 65(e), UCMJ, must be included in the ROT and memorialized in the Certification of Final Review.

24.16. Distribution of Judge Advocate Reviews Performed at the GCMCA Legal Office.

24.16.1. After completing the Article 65(d), UCMJ, review, forward the original ROT, to include four copies of the Article 65(d), UCMJ, stamped EoJ to JAJM.

24.16.2. Provide a copy of the Article 65(d), UCMJ, review and any action taken by TJAG to the accused. **(T-0)**. Notification must be accomplished via certified mail to the address provided by the accused. **(T-0)**. Proof of service must be attached to the ROT. **(T-0)**. See R.C.M. 1201(g).

24.16.3. Provide a copy of the Article 65(d), UCMJ, stamped EoJ to the same parties listed on the EoJ Distribution Checklist, available on the VMJD.

24.17. Finality of SPCM or GCM under Article 65, UCMJ. For cases that do not require corrective action, SPCMs and GCMs reviewed under Article 65, UCMJ, are final under Article 76, UCMJ, upon completion of the judge advocate's review. For cases that are otherwise eligible for Article 66, UCMJ, review but where that review is waived or withdrawn, those case are final upon completion of the Certification of Final Review. For cases that require corrective action, those cases are final upon action of TJAG and completion of the Certification of Final Review.

Section 24F—Review by The Judge Advocate General (Article 69, UCMJ)

24.18. Scope of Article 69, UCMJ, Review (R.C.M. 1201(h) & (k)). The Judge Advocate General may review a case under Article 69, UCMJ, in the following scenarios:

24.18.1. Following completion of an Article 64 or Article 65(d), UCMJ, review, the accused may submit an application to TJAG to modify or set aside, in whole or in part, the findings and sentence in a court-martial. The accused must submit any application for Article 69, UCMJ, review within the deadlines established by R.C.M. 1201(h)(2) & (3). **(T-0)**.

24.18.2. If a judge advocate conducting an Article 64, UCMJ, review of an SCM states that corrective action is required as a matter of law, and the GCMCA does not take such action, the matter shall be forwarded to TJAG to conduct an Article 69, UCMJ, review. **(T-0)**. See R.C.M. 1307(g), R.C.M. 1201(j), and [paragraph 24.9.3.4](#).

24.18.3. The Judge Advocate General does not exercise Article 69, UCMJ, authority over cases reviewed by AFCCA.

24.19. Prerequisite of Finality of Review. An application may not be filed and will not be reviewed under Article 69, UCMJ, unless a judge advocate completed a review and any other action required by Article 64 or Article 65(d), UCMJ. **(T-0)**.

24.20. Contents of Article 69(a), UCMJ, Application. In all cases, the application is written and signed by the accused or the applicant's legal representative under oath or affirmation. See the VMJD for a sample format for applications or contact JAJM. Defense counsel will not receive a copy of TJAG's action unless counsel's name is on the application. The application must contain the following:

- 24.20.1. The accused's name, SSN, and present mailing address;
- 24.20.2. The date and place of trial and type of court-martial;
- 24.20.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise;
- 24.20.4. A succinct statement of the specific relief requested and the specific grounds for the relief (a concise brief of the applicable law with appropriate citations is encouraged); and
- 24.20.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available.

24.21. Article 69(a), UCMJ, Application Procedures. The accused or the defense counsel must submit a hardcopy application to JAJM by certified mail (AF/JAJM, Appellate Records, 1500 West Perimeter Rd Ste 1130, JB Andrews, MD 20762) or a completed electronic copy to JAJM, Appellate Records section (AF.JA.JAJM.Appellate.Records@us.af.mil). For timing purposes articulated in Article 69(b), UCMJ, the application shall be considered to have been submitted to TJAG on the date the application is received by JAJM. JAJM forwards the application and the ROT to JAJI for further processing.

24.22. Review of Sealed Records when Considering Article 69(d), UCMJ, Review. In any case where an appellant considers further review under Article 69(d), UCMJ, no notice of intent to appeal has yet been filed, and matters in the record are sealed, TJAG authorizes AFCCA to appoint an appellate judge or member of the Court's professional staff to review any appellate counsel request for examination of sealed materials in accordance with R.C.M. 1113(b)(3)(B). If the appointed appellate judge or member of the Court's professional staff finds that the appellate counsel meets the criteria in R.C.M. 1113(b)(3)(B), they may permit appellate counsel to examine the sealed materials in accordance with the rule. **Note:** Such appointment does not create an inherent conflict of interest for the Chief Judge or other appellate judge; any such determination will be made on a case-by-case basis.

24.23. Notification of Article 69, UCMJ, Review Results.

24.23.1. If TJAG does not direct a rehearing or a review by AFCCA, JAJI will prepare a memorandum to notify the accused, via certified mail, of TJAG's action and attach a copy of the action. If the defense counsel's name and address is included on the Article 69, UCMJ, application, JAJI also mails a copy via certified mail to the defense counsel.

24.23.1.1. JAJI will provide to JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Article 69, UCMJ, application and will return the ROT to JAJM.

24.23.2. If TJAG orders a rehearing, the procedures in [Section 26A](#) apply. JAJI will prepare a memorandum to notify the accused of TJAG's action and attach a copy of the action, via certified mail. If the defense counsel's name and address is included on the Article 69, UCMJ, application, JAJI also mails a copy, via certified mail, to the defense counsel. JAJI will provide a copy to the GCMCA SJA.

24.23.2.1. JAJI will provide to JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Art 69, UCMJ, application and will return the ROT to JAJM.

24.23.2.2. JAJM will mail the ROT, to include documents listed in [paragraph 24.23.2.1](#), via certified mail, to the GCMCA/SJA office for rehearing.

24.23.3. If TJAG forwards the case for review by AFCCA, JAJI will prepare a memorandum to notify the accused, via certified mail, of TJAG's action and attach a copy of the action. If the defense counsel's name and address is included on the Article 69, UCMJ, application, JAJI also mails a copy, via certified mail, to the defense counsel. JAJI will provide a courtesy copy to the GCMCA SJA.

24.23.3.1. JAJI will provide to JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Art 69, UCMJ, application and will return the ROT to JAJM.

24.23.3.2. JAJM will provide the ROT, to include the documents listed in 24.24.3.1, to AFCCA. The documents listed in [paragraph 24.24.3.1](#) will be provided to appellate counsel in JAJG and JAJA.

Section 24G—Review by AFCCA, CAAF, or the Supreme Court of the United States

24.24. AFCCA Review (Article 66, UCMJ; R.C.M. 1203).

24.24.1. AFCCA reviews cases under Article 66, UCMJ, in the following scenarios:

24.24.1.1. Cases resulting in automatic appeal under Article 66(b)(3), UCMJ, (e.g., cases with a sentence which includes confinement for two years or more or a punitive discharge, dismissal or death).

24.24.1.2. Timely appeals submitted by an accused under Article 66(b)(1)(A), UCMJ, in which the sentence extends to confinement for more than six months and is not subject to automatic review under Article 66(b)(3), UCMJ. See Article 66(c)(1), UCMJ, for the timeliness requirements.

24.24.1.3. Cases referred to it by TJAG under R.C.M. 1201(k)(1)(A) following an Article 69, UCMJ, review.

24.24.1.4. Timely appeals by an accused under Article 66(b)(1)(B), UCMJ, in a case in which the government previously filed an Article 62, UCMJ, appeal. See Article 66(c)(1), UCMJ, for the timeliness requirements.

24.24.1.5. Timely appeals by an accused under Article 66(b)(1)(C), UCMJ, in a case where TJAG sent the case to AFCCA for review of the sentence under Article 56(d), UCMJ. See Article 66(c)(2), UCMJ, for the timeliness requirements.

24.24.1.6. Timely appeals by an accused under Article 66(b)(1)(D), UCMJ, in a case where an accused files for review under Article 69(d)(1)(B), UCMJ, and the application is granted by the appellate court.

24.24.2. AFCCA reviews government appeals under Articles 56(d) and 62(a), UCMJ,.

24.24.3. Any petition the accused or government wishes to file with the AFCCA must be filed in accordance with their rules of practice.

24.24.4. **Notification AFCCA Decision.** Upon return of the record of trial from AFCCA, JAJM will prepare a notification memo transmitting AFCCA's decision to the accused via certified mail. The notification will inform the accused about the right to petition CAAF for

further review, the timeliness and procedural requirements for any such petition under R.C.M. 1203(f)(2) and the contact information for JAJA. **(T-0)**. JAJM will request a receipt of the notification from the accused. See R.C.M. 1203(f)(3).

24.24.4.1. JAJM will provide a Notification of Mailing to JAJA.

24.25. CAAF Review (Article 67, UCMJ; R.C.M. 1204). In accordance with The Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, CAAF reviews the record in the following situations:

24.25.1. Decisions by AFCCA appealed by the accused in which CAAF has granted a review.

24.25.2. Cases referred to the court by TJAG.

24.25.2.1. This includes appeals by the government under Article 62, UCMJ.

24.25.2.2. If TJAG refers a case to CAAF, JAJM will cause a copy of the order forwarding the case to be served on the accused and on appellate counsel. **(T-0)**.

24.25.3. Cases in which the death penalty was adjudged, approved, and affirmed by AFCCA;

24.25.4. Decisions by AFCCA on petitions for extraordinary relief in which writ-petitions have been filed and CAAF has granted a review.

24.25.5. Any petition the accused wishes to file with CAAF must be filed directly with the Court in accordance with their rules of practice.

24.25.6. A copy of any filings made with CAAF will be promptly sent to AF.JA.JAJM.Appellate.Records@us.af.mil for inclusion in the ROT.

24.26. Petition by Writ of Certiorari for Supreme Court Review (Article 67a, UCMJ). The accused or the United States may file petitions for Supreme Court review by writ of certiorari in those cases specified in Article 67a(a), UCMJ, and R.C.M. 1205(a). Such petitions are filed according to the rules of the Supreme Court of the United States.

24.26.1. Military appellate defense counsel may assist the accused in preparing a petition for writ of certiorari and provide representation before the Supreme Court when requested by the accused.

24.26.2. When requested to do so by the Attorney General of the United States, TJAG will appoint appellate government counsel to represent the United States.

24.26.3. A copy of any filings made with Supreme Court will be promptly sent to AF.JA.JAJM.Appellate.Records@us.af.mil for inclusion in the ROT.

Section 24H—Petition for New Trial (Article 73, UCMJ; R.C.M. 1210)

24.27. Petition for New Trial. Petitions for a new trial are prepared and processed under R.C.M. 1210, and are filed with JAJM on behalf of TJAG. A petition for new trial may be submitted because of newly discovered evidence or fraud on the court, in any kind of court-martial, within three years after the EoJ.

24.27.1. The petition must be in writing and contain the matters required by R.C.M. 1210(c). When practicable, the petition should be typewritten and double-spaced. The petition is signed under oath or affirmation by the petitioner, a person possessing the power of attorney of the

petitioner for that purpose, or a person with the authorization of an appropriate court of law to sign the petition as the petitioner's representative. The petitioner forwards the original and two copies of the petition and supporting documentation directly to JAJM by certified mail (Appellate Records, 1500 West Perimeter Rd Ste 1130, JB Andrews, MD 20762) or by electronic copy to JAJM, Appellate Records section (AF.JA.JAJM.Appellate.Records@us.af.mil). An accused may submit only one petition for new trial for the same reason within the three-year limitation period.

24.27.2. Forwarding the Petition.

24.27.2.1. If the petitioner's case is pending before AFCCA, JAJM forwards the following documents to the Court: the signed petition and supporting documents, and the original ROT. JAJM also forwards a copy of the petition and supporting documents to appellate defense and appellate government counsel. R.C.M 1210(e).

24.27.2.2. If the petitioner's case is pending before CAAF, JAJM forwards the following documents to the Court: the original petition and supporting documents plus seven copies, JAJM also forwards a copy of the petition and all documents to both appellate defense and appellate government counsel. R.C.M 1210(e).

24.27.2.3. If the petitioner's case is not pending before an appellate court, JAJM forwards the petition to JAJI.

24.28. TJAG Review of the Petition. If the petitioner's case is not pending before a court, JAJI, on behalf of TJAG or an officer designated by TJAG, shall review the petition. If counsel was not previously appointed, upon request by the designated officer(s), TJAG shall appoint appellate defense counsel and appellate government counsel to act in the case. JAJM forwards one copy of the petition and supporting documents to each appointed appellate counsel. The designated officer(s) may direct appellate defense and government counsel to provide briefs in the case and upon written request or, if the designated officer(s) deem(s) it appropriate, may order oral arguments to be presented before the officer(s).

24.28.1. Filing Briefs Requiring TJAG Review.

24.28.1.1. **Form and Number of Briefs.** Briefs are to be typewritten, double-spaced on letter size white paper, and include an original plus three copies. Counsel shall be limited to filing one brief per side unless TJAG or the designated officer(s) reviewing the petition otherwise permit(s).

24.28.1.2. **Time for Filing.** The brief on behalf of the petitioner shall be filed with JAJI within 20 days after appellate defense counsel has been appointed by TJAG and a copy of the petition and supporting documents have been provided to counsel. Appellate government counsel may file a brief within twenty days after petitioner's brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within twenty days after expiration of the time allowed for the filing of a brief on behalf of the petitioner. Upon written request, the time for filing briefs by either counsel may be extended at the discretion of TJAG or the designated officer(s) reviewing the petition.

24.28.2. **Oral Arguments.** If ordered by the designated officer(s) or granted upon the request of counsel, oral arguments shall be heard after written briefs are filed.

24.28.2.1. Notice. The designated officer(s) shall give appellate counsel at least ten days' notice of the time and place of oral arguments.

24.28.2.2. Time Limits. No more than 30 minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

24.28.2.3. Number of Counsel; Opening and Closing. The designated officer(s) may limit the number of counsel making an oral argument. The counsel for the petitioner has the right to make opening and closing arguments.

24.28.2.4. Failure to Appear. Appellate counsel's failure to appear at the time and place set for oral argument may be regarded as a waiver thereof and the designated officer(s) may proceed on the case as submitted without argument or may continue the case for argument at a later date, giving due notice thereof.

24.28.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

24.28.2.6. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for TJAG's consideration. After the action has been signed by TJAG, JAJI shall cause a copy thereof to be served on petitioner and shall take such action as may be necessary to carry out the orders of TJAG as contained in the action. JAJI shall also forward a copy to JAJM for inclusion in the ROT.

24.29. Action on Petition.

24.29.1. AFCCA and CAAF. The courts shall act on the petition in accordance with their respective rules.

24.29.2. If TJAG believes meritorious grounds for relief under Article 74, UCMJ, have been established but that a new trial is not appropriate, the Judge Advocate General may act under Article 74, UCMJ, or transmit the petition and related papers to the Secretary concerned with a recommendation. TJAG may also, in cases which have been finally reviewed but have not been reviewed by a Court of Criminal Appeals, act under Article 69, UCMJ.

24.30. Miscellaneous Writs and Petitions. For all other writs or petitions filed, whether pro se or through counsel, JAJM shall receive said writs or petitions and forward to the appropriate office for action.

Chapter 25

REMISSION AND SUSPENSION (ARTICLE 74, UCMJ)

25.1. General Information. After the EoJ, SecAF has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except one approved by the President. If SecAF delegated such authority in accordance with Article 74, UCMJ, then the delegatee is bound to the same limitation. See DAFPD 51-2 for delegations under Article 74, UCMJ.

25.2. Authority Over Confinees. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFMAN 31-115, Vol 1, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, Article 74, UCMJ, authority delegated to commanders in DAFPD 51-2 is exercised by AFDW/CC or by the officer exercising general court-martial convening authority over DAF personnel in those institutions.

25.3. Authority Reserved to the SecAF. Only the SecAF may remit or suspend, any part or amount of the unexecuted part of the sentences listed below. This limitation does not apply to the convening authority's powers under R.C.M. 1109-10; Article 60, UCMJ.

25.3.1. Any sentence of a person convicted by a military tribunal, under SecAF's jurisdiction, resulting from the President's commutation of a sentence of death to a lesser punishment;

25.3.2. Any sentence SecAF approved and ordered into execution;

25.3.3. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized by the Manual for Courts-Martial;

25.3.4. Those cases referred to SecAF for action by commanders authorized to exercise Article 74, UCMJ, authority. Commanders are encouraged to forward cases involving issues most appropriate for resolution at the DAF policy level to JAJI for SecAF decision.

25.4. Authority of The Judge Advocate General. TJAG may exercise SecAF authority under Article 74(a), UCMJ, and remit or suspend in whole or in part any unexecuted part of a sentence, with the exception of those cases specified in [paragraph 25.3](#). The Director, JAJ, may act for TJAG to remit or suspend up to 90 days of an approved sentence to confinement.

25.5. Authority of the Accused's Commander. Except in cases listed in [paragraph 25.3](#), and where TJAG has not acted, the commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of an accused's sentence adjudged by a summary court-martial or a special court-martial, except for a bad conduct discharge, regardless of whether the person acting has previously approved the sentence.

25.5.1. A commander exercising only special court-martial convening authority over the command to which the accused is assigned may not remit a bad conduct discharge, but may suspend a bad conduct discharge only in the initial action.

25.5.2. A commander exercising general court-martial convening authority over the command to which the accused is assigned may remit or suspend any part or amount of the unexecuted part of any sentence except in cases listed in [paragraphs 25.3-25.4](#).

25.5.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-115, Vol 1, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, this authority is exercised only by AFDW/CC or the officer exercising general court-martial convening authority over DAF personnel in those institutions.

25.6. Publication of SecAF Actions under Article 74, UCMJ. Promulgate actions taken by SecAF in cases specified in [paragraph 25.3](#) in the Certification of Final Review, which is prepared by JAJI and distributed to the member and all other entities required in accordance with the STR/EoJ Distribution List on the VMJD. The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by the SecAF in all other cases.

Chapter 26

REHEARINGS, NEW TRIALS, OTHER TRIALS, AND REMANDS (ARTICLES 63 AND 66(F), UCMJ)

26.1. Terminology.

26.1.1. Rehearings. Proceedings ordered or authorized by an appellate or reviewing authority on the findings and the sentence or on the sentence only.

26.1.2. New Trials. Proceedings ordered pursuant to Article 73, UCMJ, because of newly discovered evidence or fraud committed on the court.

26.1.3. Other Trials. Proceedings ordered to consider new charges and specifications when the original proceedings are declared invalid because of a lack of jurisdiction or failure of a charge to state an offense.

26.1.4. Remands. Proceedings ordered during appellate review to determine issues raised on appeal which require additional inquiry. R.C.M. 810(f) reflects this practice also known as *DuBay* hearings. See *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

26.2. Notification of the Accused and Counsel. When a post-trial review or action directs or authorizes further proceedings the responsible court-martial convening authority's SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of documents requiring additional action. Ensure receipts are accomplished. Further proceedings in such a case need not be delayed solely to permit an accused to petition for a grant of review or otherwise appeal the matter.

26.2.1. **Appellate Leave.** Pursuant to Article 76a, UCMJ, an accused may only be placed on involuntary appellate leave when the approved sentence includes a punitive discharge. When an appellate court takes an action that has the effect of setting aside a punitive discharge, notify the accused of the options available to ensure proper duty status is maintained. A template notification can be found on the VMJD.

26.3. Notification of the Victim(s). When a post-trial review or action directs or authorizes further proceedings and the case involved a victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense under the UCMJ, the responsible court-martial convening authority's SJA must make reasonable efforts to locate and provide any victim and counsel (if applicable) with a copy of the document requiring additional action. See Article 6b(a)(2), UCMJ. Ensure receipts are accomplished. For additional information on required notifications, and other victims' issues on appeal, please see DAFI 51-207.

26.4. Procedures Generally. JAJM will return the record of trial along with the opinion directing or authorizing the further proceedings to the responsible convening authority's legal office via certified mail.

26.4.1. The original convening authority who made a decision whether or not to act on the accused's sentence is the responsible convening authority if the accused is still within that chain of command.

26.4.2. If the original court-martial convening authority no longer exists, the person exercising authority over the accused to convene the type of courts-martial involved is the responsible court-martial convening authority.

26.4.3. If the accused is no longer within the chain of command of the original court-martial convening authority, the original convening authority decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the convening authority in the accused's chain of command who would normally convene the type of court-martial involved.

26.4.3.1. If the original court-martial convening authority remains the responsible court-martial convening authority and determines that a rehearing should be held, the original court-martial convening authority requests that the accused be returned for the purpose of rehearing or reaches an understanding as to situs with the convening authority in the accused's current chain of command who would normally convene the type of court-martial involved.

26.4.4. JAJM sends a transmittal letter, and a copy of the pertinent decision, mandate, or order to the responsible convening authority's SJA. If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the convening authority within the accused's current chain of command who would normally convene the type of court-martial involved. See R.C.M. 810(f). Any special instructions deemed necessary to carry out the mandate of the court are to be transmitted by JAJM with the remanded ROT.

26.5. Supplemental Order. The responsible convening authority should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible convening authority publishes a supplemental order reflecting post-trial action in the case, which could include:

26.5.1. That a rehearing is ordered before another court-martial to be designated. See [paragraph 13.9.3](#) for sample language for rehearing on sentence; or

26.5.1.1. If a rehearing on sentence is impracticable, that the sentence as to the affected charges and specifications has been set-aside and (1) a new sentence is approved based only on the unaffected charges and specifications if segmented sentencing was employed at the original trial, or (2) a sentence of no punishment is approved; or

26.5.1.2. If a rehearing on findings is impracticable, that the findings of guilt and the sentence as to the affected charges and specifications have been set aside and the effected charges and specifications are dismissed. **Note:** The convening authority may not dismiss charges or specifications previously affirmed by an appellate court.

26.6. Composition of the Proceedings.

26.6.1. **Election of the Accused.** The accused has the same right to make an election as to enlisted members, all-officer panel, or military judge alone, that the accused had at the original trial.

26.6.2. **Military Judge.** The military judge at a rehearing may be the same judge who presided over the previous trial.

26.6.3. **Members.** Members that previously heard the case may not sit as part of the court-martial.

26.6.4. **Examination of Record of Former Proceedings.** Examination of the prior record requires permission of the military judge after such matters have been received in evidence. R.C.M. 810(c).

26.7. Sentence Limitations. See R.C.M. 810(d) for guidance.

Section 26A—Rehearings (Article 63, UCMJ; R.C.M. 810)

26.8. Receipt of Decision and Speedy Trial Clock. Receipt of decision by the SJA of the original convening authority (or the current convening authority if the original convening authority no longer exists) triggers the speedy trial clock for both rehearings on findings and rehearings on sentence only. In a sentence-only rehearing, an accused is “brought to trial” at the first Article 39(a), UCMJ, session. *United States v. Becker*, 53 M.J. 229 (C.A.A.F. 2000); R.C.M. 707(b)(3)(D).

26.9. Rehearings in Full. The procedures applied shall be the same as in the original trial. **(T-0).** See R.C.M. 810.

26.10. Rehearings on Sentence Only. The procedures applied shall be the same as in the original trial, except that the portion of the procedure which ordinarily occurs after challenges and through findings is omitted. **(T-0).** See R.C.M. 810.

26.10.1. The contents of the record of the original trial, consisting of evidence properly admitted on the merits relating to each offense of which the accused stands convicted but not sentenced, may be established by any party whether or not testimony so read is otherwise admissible under M.R.E. 804(b)(1) and whether or not it was given through an interpreter. See R.C.M. 810(a)(2)(1).

26.10.2. The accused at a rehearing on sentence only may not withdraw any plea of guilty upon which approved findings of guilt have been based. **(T-0).** See R.C.M. 810(a)(2)(B).

26.11. Combined Rehearings. A rehearing on sentence may be combined with trial on the merits of specifications referred to the court-martial. For additional guidance, see R.C.M. 810(a)(3). The presentencing procedure shall be the same as in the original trial. **(T-0).**

26.11.1. Additional Charges. Additional charges may be referred for trial together with charges as to which a rehearing has been directed. See R.C.M. 810(a)(4).

26.12. Rehearings Ordered by Convening Authority. If the convening authority orders a rehearing, a military judge shall be detailed and the matter will be forwarded to the military judge. **(T-0).**

Section 26B—Other Trials.

26.13. Ordering Other Trials. An authority ordering an “other trial” must state in the action the basis for declaring the proceedings invalid (i.e., lack of jurisdiction, failure of a charge to state an offense). **(T-0).** See R.C.M. 810.

26.14. Procedures in Other Trials. The procedures applied shall be the same as in the original trial. See R.C.M. 810.

Section 26C—New Trials

26.15. Procedures in New Trials. The procedures applied shall be the same as in the original trial. (T-0). See R.C.M. 810.

Section 26D—Remand

26.16. Overview. A Court of Criminal Appeals may order a remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. See R.C.M. 810(f)(1) for additional information and limitations of remand.

26.17. Remand Order. An order for remand shall be directed by the Court of Criminal Appeals to the Chief, JAT. (T-0). The Chief, JAT, will forward the order to JAJI with an information copy to JAJM. (T-0).

26.17.1. **Remand Impracticable.** If the designated GCMCA determines that the remand is impracticable due to military exigencies or other reasons, a Government appellate attorney must notify the ordering court. (T-0).

26.18. Detailing of Military Judge. When the court orders a remand, the Chief Trial Judge shall detail an appropriate military judge and notify the SJA to the GCMCA for the accused of the remand, who notifies the GCMCA of the detailing.

Section 26E—ROT and Post-Remand Concerns.

26.19. Maintaining the ROT. The original ROT and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required.

26.19.1. Any documents withdrawn from the original ROT and used at the rehearing should be substituted in the original record with a copy of the document and an MFR explaining the reason for the removal, and the new location of the original document.

26.19.2. If the accused served confinement resulting from the original trial, the new STR and EoJ must reflect that the accused will be credited for the time served.

26.19.3. The charge sheet must be annotated to reflect the case is being sent for a rehearing. See [paragraph 13.9.3](#) At the conclusion of the rehearing, a new STR and EoJ must be completed.

26.19.4. The record of the rehearing is a separate volume from the original ROT. Place the record of rehearing on top of the original ROT. The original ROT volumes are renumbered as appropriate.

26.19.5. A verbatim transcript is required for a rehearing proceeding. Forward the original and two copies of the verbatim rehearing record, along with the original ROT, to JAJM.

Chapter 27

CERTIFICATION OF FINAL REVIEW

27.1. General Provision. When appellate review is complete, JAJM notifies the SJA of the responsible convening authority. The SJA for the responsible convening authority completes the Certification of Final Review in accordance with the checklist on the VMJD. If the accused is no longer within the command of the original convening authority, a courtesy copy of the notification is forwarded to the accused's previous convening authority.

27.1.1. In all courts-martial in which a member was sentenced to confinement and gained by the AFSFC, AFDW/JA is responsible for accomplishing the certification of final review.

27.2. Requirement for Certification of Final Review. A Certification of Final Review is required in all cases when appellate review is complete, when the member has waived or withdrawn from appellate review, or TJAG takes corrective action in a case, except:

27.2.1. Cases receiving an Article 65(d), UCMJ, review, unless that review is completed because the member waived or withdrew from appellate review.

27.2.2. SCMs.

27.2.3. Cases resulting in a full acquittal, not guilty only by reason of lack of mental responsibility, mistrial, dismissal of all charges, or otherwise terminated without findings.

27.3. Distribution of the Certification of Final Review. The Certification of Final Review must be distributed within 14 days of receipt of notification of completion of final review from JAJM, unless an extension has been granted by JAJM. Distribute to the accused and the recipients listed on the EOJ.

Chapter 28

MILITARY JUSTICE ORDER LOGS

Section 28A—Convening Order Logs

28.1. Separate Logs Required. Have a separate convening order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have a separate log for SPCMs, SPCMs by military judge alone, and SCMs. Each log must also be kept separately from the log for supplemental and final orders.

28.2. Content of Log. The log must reflect the convening order number assigned to a particular case. Copies of the original convening orders must be stored with the convening order log. Digital copies are permitted. See [Section 14B](#) and [Section 23C](#) for instruction on preparing convening orders.

Section 28B—Courts-Martial/Supplemental Order Logs

28.3. Separate Logs Required. Have a separate courts-martial/supplemental order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have a separate log for SPCMs, SPCMs by military judge alone, and SCMs. Each log must also be kept separately from the log for convening orders.

28.4. Content of Log. The log must reflect the courts-martial/supplemental order number assigned to a particular case. Copies of the original courts-martial/supplemental orders must be stored with the supplemental order log. Digital copies are permitted.

Chapter 29

SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

Section 29A—Sex Offender Notification

29.1. General Provision. If the member has been convicted of certain “qualifying offenses” potentially requiring sex offender registration the DAF is required to notify federal, state, and local officials. **(T-0).** As noted in the STR/EoJ Distribution List on the VMJD, a copy of the STR and EoJ, to include attachments and the first indorsements, including any placement of the accused on excess or appellate leave status, must be distributed to the AFSFC, afcorrections.appellateleave@us.af.mil, and DAF-CJIC, daf-cjic@us.af.mil.

29.2. Qualifying Offenses. See DoDI 1325.07 for a list of offenses which require DAF notification to federal, state, and local officials.

29.2.1. Federal, state and local governments may require an individual to register as a sex offender for offenses that are not included on this list; therefore, this list identifies offenses for which notification is required by the DAF but is not inclusive of all offenses that trigger sex offender registration.

29.2.2. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Questions about whether an offense triggers notification requirements may be directed to the DAF-CJIC Legal Advisor (HQ AFOSI/JA)

29.3. Notification Requirement. The DAF must notify federal, state, and local officials when a DAF member is convicted of a qualifying offense at GCM or SPCM. This requirement applies regardless of whether or not the individual is sentenced to confinement. See DoDI 1325.07, and AFMAN 31-115, Vol 1. The DAF executes this requirement via AF confinement officer/NCO/liaison officer notification to the relevant jurisdictions using the DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. See AFMAN 71-102, Chapter 3.

29.4. Timing of Notification.

29.4.1. In cases where the member is sentenced to and must serve post-trial confinement, the notification must be made prior to release from confinement. **(T-0). Note:** The member may not be held beyond the scheduled release date for purposes of making the required notifications. This notification is accomplished by the security forces confinement officer, or designee responsible for custody of the inmate, in accordance with the requirements detailed in AFMAN 31-115, Vol 1; AFMAN 71-102; and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. **(T-0).**

29.4.2. In cases where the offender will not serve post-trial confinement either because (1) no confinement was adjudged, or (2) confinement credit exceeds adjudged confinement, the SJA must notify the servicing confinement NCO/officer or SFS/CC in writing within 24 hours of conviction. Once informed by the SJA that the member was convicted of a qualifying offense, the confinement officer or SFS/CC ensures the notifications are made in accordance with AFMAN 71-102, AFMAN 31-115V1, and DoDI 5525.20.

29.5. Legal Office Responsibilities. SJAs are not responsible for directly notifying federal, state and local law enforcement of qualifying convictions. However, SJAs must ensure their support responsibilities are accomplished in order to ensure the DAF is meeting its obligations under federal law and DoD policy. SJAs facilitate the notification requirement in two ways: (1) completion and distribution of post-trial paperwork in accordance with this instruction and the STR/EoJ Distribution List on the VMJD; and (2) notification of the installation confinement officer/NCO in cases where the offender is convicted but not required to serve post-trial confinement, in accordance with this instruction. See [paragraph 29.6](#) and [paragraph 29.7](#) and AFMAN 71-102, Chapter 3.

29.6. STR and EoJ. If a member is convicted of a qualifying offense referred to trial by general or special court-martial on or after 1 January 2019, the appropriate box must be initialed on the first indorsement of the STRs and the EoJ by the SJA. The first indorsement format, and guidance for completion are located on the VMJD.

29.7. Notification to the Installation Confinement Officer/NCO. In cases where the member was convicted of a qualifying offense at a general or special court-martial but no post-trial confinement will be served, the SJA must notify, in writing, the confinement officer (or SFS/CC if no confinement officer/NCO is at that installation) of the conviction and sentence within 24 hours of announcement of the verdict. The corrections officer, or the SFS/CC, as appropriate, ensures that the notifications required in AFMAN 31-115, Vol 1 and AFMAN 71-102 are made.

29.8. Convictions by a Host Country. Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with [Section 29A](#) is required in these cases, the SJA notifies the confinement officer or SFS/CC, as required. It is the SJA's responsibility to ensure the offender completes their portion of the DD Form 2791, or equivalent document, upon release from the host nation. The DD Form 2791 and copies of the ROT must be provided to the appropriate federal, state, and local law enforcement in accordance with [paragraph 29.3](#) and [paragraph 29.4](#), and DoDI 1325.07.

Section 29B—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. §§ 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)

29.9. General Provision. The DAF, through OSI and Security Forces, submits offender CHRI and fingerprints to the FBI when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See AFMAN 71-102; DoDI 5505.11; 28 C.F.R. §§ 20.30, et seq.; and 28 U.S.C. § 534. Such data is submitted to and maintained in the Interstate Identification Index (III), maintained as part of the FBI's National Crime Information Center (NCIC).

29.10. Criminal History Record Information. CHRI reported in accordance with DoDI 5505.11 and AFMAN 71-102 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge).

29.11. Identified Individuals.

29.11.1. The DAF submits CHRI and fingerprints on any military member or civilian investigated by a DAF law enforcement agency (OSI or Security Forces) when a probable cause determination has been made that the member committed a qualifying offense.

29.11.2. The DAF submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in AFMAN 71-102 and DoDI 5505.1 when a probable cause determination has been made that the member committed an equivalent offense.

29.12. Disposition Data. The DAF, through DAF-CJIC, OSI and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, NJP, certain administrative actions, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

29.13. Qualifying Offenses. Qualifying offenses for fingerprinting requirements constitute either (1) serious offenses; or (2) non-serious offenses accompanied by a serious offense. See 28 CFR. 20.32. A list of offenses that, unless accompanied by a serious offense, do not require submission of data to III is located in AFMAN 71-102, Attachment 5.

29.14. Military Protective Orders. Issuance of an MPO also triggers a requirement for indexing in NCIC. See [paragraph 29.39](#) and AFMAN 71-102; 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*.

29.15. Qualifying Offenses Investigated by Commander Directed Investigation (CDI). If any qualifying offense was investigated via CDI or inquiry and is subsequently preferred to trial by SPCM or GCM, then CHRI and fingerprints must be submitted to III in accordance with AFMAN 71-102 and DoDI 5505.11. SJAs must ensure they advise commanders as to the requirement to consult with SFS and OSI to obtain and forward CHRI and fingerprints in accordance with that mandate. **Note:** If charges are not preferred, then CHRI and fingerprints are not submitted to III; however, if charges are preferred and later withdrawn, CHRI and fingerprints must be submitted. **(T-0).**

29.16. Probable Cause Requirement. Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. See AFMAN 71-102; DoDI 5505.11. The collection of fingerprints under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose fingerprints are being collected.

29.17. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

29.18. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data in accordance with AFMAN 71-102 and DoDI 5505.11.

29.19. Legal Office Final Disposition Requirement.

29.19.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a lesser included offense, sentence data, nonjudicial punishment, no action) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.19.2. The required format for the first indorsement is located on the VMJD.

29.19.3. The servicing legal office will provide disposition documentation to the local Security Forces, OSI, and DAF-CJIC within five duty days of completion of the documents discussed in paragraphs [29.19.4-29.19.7](#).

29.19.4. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ must be distributed to the local DAF investigative agency that was responsible for the case (e.g., OSI or Security Forces) and DAF-CJIC within five duty days of completion of the EoJ.

29.19.5. For information regarding final disposition where the final disposition consists of NJP, see DAFI 51-202.

29.19.6. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local OSI detachment and DAF-CJIC in accordance with [paragraph 10.3.2](#)
Note: Do not forward the sexual assault legal review, only the convening authority notification memorandum.

29.19.7. For all other final dispositions which must be submitted in accordance with [Section 29E](#), AFMAN 71-102, and DoDI 5505.11, the SJA must ensure disposition data is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

29.20. Expungement of Criminal History Data and Fingerprints. Expungement requests are processed in accordance with guidance promulgated in AFMAN 71-102.

Section 29C—DNA Collection (10 U.S.C. §

1565; DoDI 5505.14, DNA Collection and Submission Requirements for Law Enforcement)

29.21. General Provision. The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when fingerprints are collected pursuant to DoDI 5505.11. **(T-0).** See DoDI 5505.14; 10 U.S.C. 1565; 34 U.S.C. §

40702, *Collection and use of DNA identification information from certain federal offenders*; 28 C.F.R. § 28.12, *Collection of DNA samples*.

29.22. Qualifying Offenses. DNA collection and submission is required when fingerprints are collected pursuant to DoDI 5505.11. DNA is not collected or submitted for the non-serious offenses enumerated in AFMAN 71-102, Attachment 5 unless they are accompanied by a serious offense requiring fingerprint collection in accordance with DoDI 5505.11.

29.23. Probable Cause Requirement. DNA collection occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified committed it. The collection of DNA under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose DNA is being collected.

29.24. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel prior to submission of DNA for inclusion in CODIS in accordance with AFMAN 71-102. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

29.25. Timing of Collection and Forwarding. OSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14 and AFMAN 71-102. If not previously submitted to USACIL, the appropriate DAF law enforcement agency (i.e., OSI or Security Forces) will collect and submit DNA samples from service members: against whom court-martial charges are preferred in accordance with RCM 307 of the MCM; ordered into pretrial confinement after the completion of the commander's 72-hour memorandum required by RCM 305(h)(2)(C) of the MCM; and convicted by general or special court-martial.

29.26. STR and EoJ. In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the first indorsement of the STR and EoJ by the SJA.

29.27. Final Disposition Requirement. As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, final disposition of court-martial charges must be forwarded to OSI and Security Forces to ensure DNA is appropriately handled.

29.27.1. The final disposition is memorialized on the following forms: STR and EoJ, whichever is applicable. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.27.2. Formats for the STR, EoJ, and first indorsement are located on the VMJD.

29.27.3. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to OSI in accordance with [paragraph 29.19.6](#).

29.27.4. For all other dispositions, the SJA must ensure disposition data for qualifying offenses is provided to ensure timely and accurate inclusion of final disposition data. Disposition documentation must be distributed to the local OSI detachment, Security Forces and DAF-CJIC within five duty days of completion of the final disposition. See [Section 29E](#) for further distribution guidance.

29.28. Expungement of DNA. DoD expungement requests are processed in accordance with guidelines promulgated in AFMAN 71-102 and DoDI 5505.14.

Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. §

921-922, Definitions; 27 C.F.R. § 478.11)

29.29. General Provision. 18 U.S.C. § 922, *Unlawful acts*, prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person who fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(12).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within

the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See **paragraph 29.33.2**. The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or

guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under [Section 29B](#).

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. **Form of Notice.** A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. **SJA Responsibility to Notify.** In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: daf.cjic@us.af.mil. The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in paragraph [29.30.7.1](#) and [18 U.S.C. § 922](#), both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local

responsible DAF investigative agency and DAF-CJIC within five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense of misdemeanor domestic violence (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

Section 29E—Distribution of Court-Martial Data for Indexing Purposes

29.35. General Provision. In order to ensure that indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the applicable local DAF law enforcement agency and DAF-CJIC:

- 29.35.1. Charge sheets in cases referred to general courts-martial, where any charged offense has a possible sentence to confinement greater than one year;
- 29.35.2. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.3. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.4. In SCMs for drug use or possession that would trigger firearm prohibitions, the final completed DD Form 2329 and first indorsement;
- 29.35.5. Certification of Final Review in any case where any offense qualifies for any type of indexing discussed in this chapter;
- 29.35.6. Notification of outcome of any cases as to qualifying offenses litigated at or disposed of via magistrate court;
- 29.35.7. Order pursuant to Article 73, UCMJ, for a new trial, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.8. Order for a rehearing on the findings or sentence of a case, pursuant to Article 63, UCMJ and
- 29.35.9. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under [Sections 29B-D](#) of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with [paragraph 10.2](#); NJP records in accordance with DAFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, administrative paperwork for drug use or possession).

29.36. Additional Notification Requirements. SJAs should be aware of other notification requirements as discussed in AFMAN 71-102 and support commander notification requirements, as needed. SJAs should consider partnering with local DAF law enforcement to conduct necessary commander training on notification requirements, particularly as it relates to firearms prohibitors and indexing concerns implicated by CDIs.

29.37. General Courts-Martial Continuances, Delays and Abatements. Any continuance, delay or abatement that results in the announcement of a sentence or acquittal in a general court-martial occurring more than six months after referral may require modification of disposition information in NICS. Government counsel must notify the investigating agency (e.g., local OSI detachment or Security Forces) and DAF-CJIC in the event a continuance or delay is granted or abatement ordered in a general court-martial.

29.38. Electronic Submission Preferred. These complete and unredacted documents should be submitted to the DAF-CJIC electronically to ensure prompt processing. Documents should be submitted to daf.cjic@us.af.mil and may be submitted as attachments or via other secure electronic method. **Note:** The original AF Form 177 used to document firearm prohibitions must also be submitted to DAF-CJIC via mail in accordance with AFMAN 71-102.

Section 29F—Protective Order Submissions

29.39. National Crime Information Center (NCIC) Submission. When a commander issues an MPO, the commander must forward the MPO to Security Forces in accordance with **Section 4C. (T-0)**. Security Forces enters the MPO into NCIC. The commander also notifies Security Forces when any terms are modified or the MPO is terminated. **(T-0)**. SJAs must be cognizant of these requirements and appropriately advise commanders of their responsibilities and the collateral effects of issuing, modifying or terminating MPOs.

Chapter 30

METRICS AND MILESTONES

Section 30A—Case Processing Overview

30.1. Case Processing Time.

30.1.1. The DAF must account for resource investments, system and program effectiveness, and personnel impacts of military justice in an enterprise environment. An increase in processing time stands in contrast to the decrease in number of cases tried in recent years. Our separate system of military justice provides different or diminished constitutional rights to account for military requirements, including efficiency and effectiveness of the military justice system. It follows that an even greater emphasis on diligence and timeliness should be pursued under the UCMJ than in the civilian system. *United States v. Moreno*, 63 M.J. 129 (CAAF 2006). This is not to say that fairness, due process, or accused or victim considerations are forfeited in the name of promptness, but it does recognize that diligence and timeliness are entirely consistent with good order and discipline and necessary for fairness and justice.

30.1.2. **Coordination with Investigators.** Consistent with CIP and SVIP constructs discussed in [Chapter 4](#), SJAs must work with local OSI detachment commander and Security Forces Investigations to coordinate with agents and detectives as early as possible in the investigative stage of a case.

30.1.3. **Time Management.** SJAs and chiefs and NCOs in charge of military justice, at all levels of command, should regularly analyze available AMJAMS data relating to each stage of court processing over which they have significant control to determine specific areas for improvement to maximize effectiveness and efficiency. The expeditious processing of courts-martial is essential to minimize disruptions in the DAF mission, the lives of victims, witnesses, and accused members, and to minimize DAF costs. Metrics and milestones provide a framework by which we can maintain healthy military justice processes while also remaining faithful to legal requirements of diligence and timeliness. Decisions on how to address disciplinary matters should not be made solely to produce seemingly quick results, but decision-makers and practitioners must be cognizant of the negative impacts generated by unnecessary delays. Metrics and milestones are offered to help calibrate military justice processes; the goals are derived from historical data and from legal requirements. They are intended to maintain fidelity with *Moreno* and *United States v. Livak*, 80 M.J. 631 (AFCCA 2020). Members are cautioned against dismissing military justice goals as a career field-driven interest item; good order and discipline, and the health of the processes and protections that accompany it, are a common pursuit for all who swear to support and defend the Constitution.

Section 30B—Metrics

30.2. General Provision. Metrics are standards of measurement by which certain requirements can be assessed. Metrics for courts-martial assess compliance with time-based, legal requirements. Compliance with the legal requirement is presented as a percentage of times actions were in compliance with the targeted measurement standard. The law and practicality recognize there can be valid exceptions to compliance; therefore, explanations for such exceptions must be captured

and documented to demonstrate applicability of an exception. The below metrics ensure focus is appropriately dedicated to time requirements established by law.

30.2.1. Speedy Trial. Bring an accused to trial within 120 days of preferral, imposition of pretrial restraint, or entry onto active duty. R.C.M. 707. Arraignment will toll the speedy trial clock. *United States v. Doty*, 51 M.J. 464 (CAAF 1999). Practitioners who seek to stop the speedy trial clock through arraignment should first attempt to meet all relevant discovery obligations and charge sheet modifications. **Note:** Separate from the metric, practitioners should also consider speedy trial considerations under the 6th Amendment and Article 10, UCMJ, whenever pretrial restraint is imposed, as these standards are different from R.C.M. 707.

30.2.2. ROT Complete Defined. ROT completion is defined as the completion and compilation of the ROT (both Parts **1** and **2**), including all attachments and allied papers as prescribed by R.C.M. 1112(f), DAFMAN 51-203, and the ROT Assembly Checklist on the VMJD.

30.2.3. ROT Completion to ROT Forwarding. A complete and accurate ROT, as defined in **paragraph 30.2.2.1**, must be sent to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments.

30.2.4. Processing Cases for Appeal. The appropriate office for processing cases wherein the accused has an opportunity for Article 66, UCMJ, review is JAJM. The appropriate processing office for cases wherein the accused has an opportunity for Article 64, UCMJ, review or Article 65(d), UCMJ review is the GCMCA SJA. While not an enumerated metric, healthy military justice processes should ensure a complete and accurate ROT in all cases subject Article 65(d), UCMJ, review is sent to JAJM within seven days of completion of the review.

Section 30C—Milestones

30.3. Milestones Generally. Milestones are time-based goals to assist in expediting the administration of justice. The goals are displayed as benchmarks for certain stages of the trial process and the process in its entirety. The goals are established through an analysis of past case processing times and they reflect analysis of the historical median of the number of calendar days it has previously taken to complete phases of the court-martial process. Milestones provide a destination marker and a piece of an entire collective processing effort.

30.3.1. **Using Milestones.** Milestones provide practitioners with the ability to manage near-term and long-term processing issues and to orient them to lessons-learned, positive and negative, in their military justice program, thereby maintaining a healthy military justice program that balances protections, effectiveness, and efficiencies. The intent is to encourage legal offices to focus on strengths, weaknesses, and improvements to their entire process; milestones offer a way to better understand each part of the whole process.

30.4. General Court-Martial Milestones.

30.4.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and Reports of Investigation (ROIs).

30.4.2. Prefer charge(s) within 40 days of the date the OSI, Security Forces or Commander-Directed Investigation ROI is published.

30.4.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the publication of the ROI, AMJAMS will reflect “0” days between publication of the ROI and preferral.

30.4.4. Complete the Article 32, UCMJ, hearing and report within 36 days of the date of preferral of charge(s).

30.4.5. Refer the charge(s) within 21 days of the date of the completion of the Article 32, UCMJ, hearing and report.

30.4.6. Complete the trial (sentence/acquittal) within 75 days of the date of referral.

30.4.7. Sentence/Acquittal to ROT Completion. The ROT, including all attachments and allied papers as defined in [paragraph 30.2.2.1](#), must be complete within 64 days of announcement of the sentence or acquittal.

30.4.8. Forward the ROT to the appropriate office for post-trial review within 250 days of the date the OSI, Security Forces or Commander-Directed Investigation ROI is published.

30.5. Special Court Martial Milestones.

30.5.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and report of investigations.

30.5.2. Prefer charge(s) within 24 days of the date the OSI, Security Forces or Commander-Directed Investigation (CDI) ROI is published.

30.5.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the report of investigation, AMJAMS will reflect “0” days between publication of the report of investigation and preferral.

30.5.4. Refer the charge(s) within four days of the date of preferral of charge(s).

30.5.5. Complete the trial (sentence/acquittal) within 40 days of the date of referral.

30.5.6. Sentence/Acquittal to ROT Complete. Complete the ROT, including all attachments and allied papers as defined in [paragraph 30.2.2.1](#), within 38 days of announcement of the sentence or acquittal.

30.6. Transcription Milestones. Every effort should be made to complete the court-martial transcript prior to completion of the EoJ. However, in no case should transcription exceed the following milestones:

30.6.1. In a GCM, complete the transcription within 64 days following the completion of trial.

30.6.2. In a SPCM, complete transcription within 38 days following the completion of trial.

Section 30D—Summary Court-Martial Measures

30.7. Summary Court-Martial Processing. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate investigative assistance to agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results.

30.7.1. Prefer charge(s) within 40 days of the date of discovery.

30.7.2. Complete action within 21 days of preferral of charge(s).

30.7.3. Forward a complete and accurate ROT to the appropriate office for processing post-trial review within 14 days of action.

Section 30E—Milestones Common to All Courts-Martial

30.8. Date of Discovery. The date of discovery of the offense is defined as the date when the legal office first becomes aware of an allegation and a subject has been identified. Allegations may be made initially to an investigative agency (e.g., OSI, Security Forces, Inspector General), commander, supervisor, or first sergeant, and legal offices are strongly encouraged to maintain close relationships with all of these entities to ensure minimal delay between the initial report and legal office notification. In all cases where additional allegations against an identified subject are discovered, use the earliest date of discovery of all offenses (e.g., allegation one is reported to the legal office on 1 January and allegation two is reported to the legal office on 1 March, the date of discovery is 1 January).

Chapter 31

AUTOMATED MILITARY JUSTICE ANALYSIS AND MANAGEMENT SYSTEM (AMJAMS)

Section 31A—General Information

31.1. Purpose. The purpose of AMJAMS is to collect data pertaining to investigations, NJP imposed pursuant to Article 15, UCMJ, trials by court-martial, and related military justice activity. Use of AMJAMS is required for legal offices to manage their cases. The use of any other case management system (e.g., excel spreadsheets, digital whiteboards) is not authorized. As the DAF eventually transitions to the Disciplinary Case Management System (DCMS) as a successor to AMJAMS, this chapter and all of its paragraphs will apply equally to DCMS. The information collected is required for the following reasons:

- 31.1.1. To conduct statistical studies that measure disciplinary rates and trends and evaluate military justice involvement as it affects the quality of the force and the personnel needs of the service;
- 31.1.2. To provide various management reports to judge advocate personnel at all levels;
- 31.1.3. To provide statistical data to the DoD concerning military justice;
- 31.1.4. To provide raw data to DIBRS; and
- 31.1.5. To reply to inquiries concerning military justice.

31.2. Uses. Based on user inputs, AMJAMS contains detailed information on offenses and processing timelines as well as demographic information on subjects and victims. The information in AMJAMS provides effective management tools for use by Headquarters, MAJCOMs/FLDCOMs, general and special court-martial jurisdictions, the judiciary, and the appellate divisions. When used properly, the information will assist in eliminating or highlighting excessive processing delays and in monitoring the current status of military justice actions from the investigation stage through completion of the appellate process. AMJAMS data is controlled unclassified information and may only be accessed by personnel for an official purpose while scrupulously recognizing the need for confidentiality and attorney work product.

31.3. Release. While transparency and access to military justice records offers the public an opportunity to maintain confidence in the fairness of the military justice system, the release of certain information must be balanced by key limitations. In particular, practitioners must maintain an awareness that access to certain data found within AF/JA's legal management systems—including records of legal assistance visits, civil litigation, and UCMJ action (including victim-centric information)—is not just subject to the Privacy Act. Access is also limited by both case law and Executive Order. Such limitations protect the United States and its service members' interests by shielding delicate information from an unauthorized release. The shield exists so long as it is not waived (explicitly or through practice); as such, the data is scrupulously managed. The shield is referred to as the attorney work product privilege, which was established by the Supreme Court of the United States in *Hickman v. Taylor*, 329 U.S. 495 (1947). The privilege was subsequently written into the Federal Rules of Civil Procedure, Rule 26(b)(3). The protection was explicitly extended to the work product—case preparation and thought processes—of military justice practitioners in *United States v. Romano*, 46 M.J. 269 (CAAF 1997). In *United States v.*

Bowser, 73 M.J. 889 (AFCCA 2014), AFCCA noted the work product privilege encompasses an attorney's thought processes and is specifically addressed by Executive Order (EO) 13825, *2018 Amendments to the Manual for Courts-Martial, United States*, in R.C.M. 701(f). The case law and EO complement each other to ensure Air Force legal practitioners comply with both their own licensing requirements and ABA Model Rule 1.6, *Confidentiality of Information*, in representing their clients.

31.3.1. AF/JA is the release authority for data collected and stored in AMJAMS and in the Disciplinary Case Management System (DCMS) and the products they may generate.

31.3.2. Requests for release of AMJAMS data and products will be considered in light of applicable limitations.

31.3.3. AF/JA is the release authority when a request for derogatory data on an individual is presented to the installation legal office. AF/JA delegates the release authority to the installation SJA consistent with the limitations established under the Privacy Act, DAFI 51-201, and other applicable policy. The delegation does not include the release of reports that are generated by or from AMJAMS. Any release must shield attorney work product to the maximum extent possible.

31.3.4. Installation legal offices are sometimes asked to use AMJAMS to determine whether or not derogatory data exists for a particular individual (e.g. to vet candidates for professional opportunities). SJAs are encouraged to remind the requestor that AF/JAJM frequently vets those same candidates on collective lists to meet headquarters requirements. More importantly, SJAs should limit the release of any derogatory data to matters that fall within the JA portfolio as the OPR. The SJA can confirm, in response to an official request, if an individual was court-martialed because AF/JAJM is the custodian of court-martial records. SJAs should not confirm if a candidate received non-judicial punishment or was investigated because the JA community is not OPR for those records and it does not comprehensively track corrections or expungements to such records.

31.4. Policy. AMJAMS inputs must be timely, complete, and accurate. Timely collecting, reporting, and processing of military justice information is essential to SJAs at all levels. Timely inputs keep senior leadership apprised of and prepared to answer questions about developing investigations that may generate high-level attention. Inputs are ordinarily completed within one duty day of a military justice "event" in a case, beginning with the Investigation module. "Events" include but are not limited to stages common to all courts such as investigation, preferral, referral, but also include any significant changes to the facts or processing of a case. If the data field is applicable to a case, an input must be made as soon as the data is available and updated as the need arises.

31.5. Responsibilities.

31.5.1. SPCMCA and GCMCA legal office personnel have primary responsibility for AMJAMS data entry except appellate information. AMJAMS data should be complete, accurate, and timely.

31.5.2. GCMCA legal office personnel have primary responsibility for reviewing AMJAMS inputs with regard to cases in the command. The GCMCA legal office must validate all court-martial verdicts and sentences within seven calendar days of completion of the STR.

31.5.3. JAJM and appellate personnel have primary responsibility for AMJAMS data entry of appellate information.

31.5.4. JAS has primary responsibility for granting legal practitioners access to AMJAMS.

Section 31B—Case Processing

31.6. Investigation. New cases must be opened in AMJAMS as investigations within one duty day of any personnel in the legal office becoming aware of a potential Article 15, UCMJ, court-martial, or circumstances reportable as a special interest case. See [Section 31D](#). When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to JAJM and document the rationale for the delayed entry in AMJAMS case notes.

31.7. AMJAMS Data Completion. AMJAMS data must be filled out in accordance with guidance promulgated by JAJM. AMJAMS guidance is found within this regulation and on the VMJD.

Section 31C—Reports and Queries

31.8. Reports. Reports generated by AMJAMS can be accessed through the Management System itself, or from FLITE. Legal offices at all levels of command should review their AMJAMS reports on a weekly basis for accuracy.

31.8.1. In AMJAMS, go to the “Reports” drop-down menu and select “Reports.”

31.8.2. In FLITE, go to the “Reports” drop-down menu and select “Automated Military Justice Analysis and Management System.”

31.9. Queries. Generate queries via AMJAMS by going to the “Reports” drop-down menu and selecting “Reports” or “Query.” Then select the type of query and its parameters.

Section 31D—SIRs

31.10. Reporting Special Interest Cases. Certain cases involving DAF members generate interest within Headquarters DAF because of the nature of the offense, the subject’s grade, or some other reason. SJAs must be sensitive to SIR requirements.

31.11. Responsibilities. Reporting special interest cases is a base-level responsibility. Reports must be prepared and forwarded to JAJM within 24 hours of learning of the incident by the base legal office responsible for the case or supporting the subject’s unit of assignment. If a base legal office learns of a SIR case but another office is responsible for it, the base legal office with knowledge of the case should inform the responsible legal office. Legal office reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority.

31.12. Requirements. SIRs must be created in the following circumstances:

31.12.1. Officer, E-8 and E-9 Subjects. Regardless of offense, report all allegations resulting in an investigation involving officers, and enlisted personnel in the grades of E-8 and E-9.

31.12.2. Serious Crimes. Regardless of the subject's grade, report all cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

31.12.2.1. Offenses resulting in death, including violations of Articles 118 (Murder), 119 (Manslaughter); 119a (Death or injury of an unborn child), and 134, UCMJ, (Negligent Homicide);

31.12.2.2. For offenses occurring prior to 1 January 2019, violations of Articles 120, 120a, 120b, 120c, 125 (Forcible Sodomy), or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof;

31.12.2.3. For offenses occurring on or after 1 January 2019, violations of Articles 117a, 120, 120b, 120c, 130, or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof;

31.12.2.4. Domestic violence allegations involving substantial or grievous bodily harm, committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, guardian, or other directly related family member; or by a person similarly situated to a spouse, parent or guardian of the victim.

31.12.2.5. Retaliation, in violation of Article 132, UCMJ, and attempts thereof;

31.12.2.6. Espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States;

31.12.2.7. Environmental crimes, including civilian felony prosecution;

31.12.2.8. Prohibited activities with military recruit or trainee by person in position of special trust in violation of Article 93a, UCMJ;

31.12.2.9. Other circumstances if required by the relevant NAF, MAJCOM or FLDCOM.

31.12.3. Cases Involving Command or Media Interest.

31.12.3.1. Any case where the chain of command is required or likely to report the case via Operational Event/Incident Report (OPREP3) per AFMAN 10-206, *Operational Reporting (OPREP)*.

31.12.3.2. Any case with potential or actual community or local concerns or potential or actual media interest.

31.13. What to Report. Use AMJAMS to generate the SIR, which must include case details, including a description of the alleged offenses, dates and locations, UCMJ articles and specifications, media interest, investigating agency, next steps, and any unusual or significant features of the case. Identify missing information and follow up as soon as possible.

31.13.1. If at the time of an incident, the alleged perpetrator is unidentified, report the case to JAJM via email.

31.13.2. Ensure law enforcement sensitive investigative information is not included in the SIR without concurrence of the OSI Detachment Commander/Special Agent-in-Charge or investigating agency.

31.13.3. For matters investigated by CDI, Inspector General (IG), or Military Equal Opportunity (MEO), summarize the allegations and, when the investigation is done, identify substantiated and not-substantiated findings.

31.13.4. For cases disposed of by NJP or administrative action, identify the wrongdoing or offenses alleged (e.g., “On (date), Subject received NJP/LOR for...”).

31.13.5. For cases handled by civilian authorities, include information that identifies the investigative and prosecutorial authorities, court, jurisdiction, and a summary of the charges, pleas, findings and sentence.

31.13.6. For sexual assault cases, indicate whether a Circuit Trial Counsel was consulted under the “Pending Offense” subfolder, “Case Information” tab.

31.13.7. If a case was closed without action, explain why.

31.14. When to Submit a SIR.

31.14.1. Within twenty-four hours of learning of an incident that requires a SIR. If AMJAMS cannot be accessed within twenty-four hours, submit case information using the most expeditious means possible (likely email), and input the case into AMJAMS as soon as possible. SIR reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority

31.14.2. When a significant event in a reported case occurs. Significant events include discovery of additional SIR-required charges; disposition of investigation; referral of charges; referral of charges; results of trial; convening authority action; dismissal of any charges; and media interest.

31.14.3. Continue to submit reports until completion of the court-martial, NJP or administrative action, including the decision whether to file NJP action in an Officer Selection Record or Senior Noncommissioned Officer Selection Record, or as directed.

31.15. How to Report.

31.15.1. Use AMJAMS to generate the SIR. SecAF and NAF/MAJCOM SIR buttons are located in the SIR case tree item in AMJAMS. Set the “Reporting Required” flag to “yes” for cases requiring special interest reporting as directed in this section. The “NAF/MAJCOM Requirement” button is selected when a NAF, FLDCOM or MAJCOM requires additional reporting not required by this Instruction. Once a case is marked as a SIR, it remains a SIR for the life of the case. Also, the “NAF/MAJCOM Requirement” button, once selected, remains selected unless otherwise directed by the NAF, FLDCOM or MAJCOM.

31.15.2. Transmitting SIRs to JAJM. Go to AMJAMS Reports page and select SIR. Enter the case ID, select case notes and run the SIR. Save a.pdf copy of the SIR and send it via encrypted email to AF.JAJM.SIR.Workflow@us.af.mil. Further instructions are available on the VMJD.

31.15.3. Initial. When submitting an initial SIR, use the following subject line/title: Controlled Unclassified Information (CUI) NEW SIR: CASE ID # - RANK SURNAME – BASE.

31.15.4. Updated. When submitting an updated SIR, use the following subject line/title: Controlled Unclassified Information (CUI) UPDATED SIR: CASE ID # - RANK SURNAME – BASE.

31.15.5. Final. When submitting a final SIR, use the following subject line/title: Controlled Unclassified Information (CUI) FINAL SIR: CASE ID # - RANK SURNAME – BASE.

Section 31E—Requesting Access to AMJAMS

31.16. Overview. AMJAMS access is not automatic and all users must be approved for access by the office where they will be performing military justice actions. To ensure that AMJAMS is being used for official purposes, all requests must be submitted, via email, to JAS. AMJAMS access is approved by JAJM.

31.16.1. Office of Assignment. Before a person can be given AMJAMS access, the individual must be assigned to the requesting office in Roster. Only offices with a military justice mission (i.e., the mission includes prosecuting courts-martial or the legal office supports a convening authority empowered to convene courts-martial) are authorized access to AMJAMS.

31.16.2. Contents of the Request. All requests must be submitted via email to afloa.helpdesk@us.af.mil. The email must originate from one of the following personnel within the office: SJA, DSJA, Law Office Superintendent (or Legal Office NCOIC), Chief of Military Justice, or NCOIC of Military Justice. The email must include the name/rank of the person being granted access, but should not include SSNs.

31.16.3. Temporary Access to AMJAMS. When a member is deployed or TDY to an office and needs AMJAMS access, the same requirements for requesting an account shall apply. Additionally, the individual will need to create a temporary role in Roster and that temporary role will need to be gained into the requesting office before the request can be processed. Temporarily assigned individuals will have their AMJAMS access removed automatically at the end of the temporary tour.

Chapter 32

ARTICLE 137, UCMJ, REQUIRED COMMANDER BRIEFINGS, AND STATUS OF DISCIPLINE

Section 32A—Article 137, UCMJ, Briefings for Enlisted Personnel and Officers

32.1. Responsibilities.

32.1.1. The FSS/CC identifies enlisted and officer personnel on the installation required to complete an Article 137, UCMJ, briefing.

32.1.2. The SJA, in coordination with the FSS/CC, must ensure base personnel are briefed on the UCMJ as required by Article 137, UCMJ, and this chapter. **(T-0).**

32.2. Content. The Article 137, UCMJ, briefings for enlisted personnel and officers must cover, at a minimum, the following topics:

32.2.1. Articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139, UCMJ; **(T-0).**

32.2.2. Types of punitive and administrative discharges;

32.2.3. Bases for characterizing service;

32.2.4. The benefits, disadvantages, and possible future effects of each type of service characterization;

32.2.5. The denial of certain benefits to most persons who fail to complete at least two years of an original enlistment (38 U.S.C. § 5303A, *Minimum active-duty service requirement*); and

32.2.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces.

32.3. Article 137, UCMJ, Delivery Methods. The following delivery methods apply to Article 137 briefings.

32.3.1. Online. The preferred method for accomplishing Article 137, UCMJ, briefings is online. The myLearning online training meets the content requirements in [paragraph 32.2](#) for the enlisted and officer briefings. **Note:** Commanders must accomplish the additional required Article 137, UCMJ, briefings discussed in [Section 32B](#).

32.3.2. In-person. Article 137, UCMJ, briefings may also be conducted in-person by a judge advocate, a DAF civilian attorney, or a 5-level or higher paralegal, to personnel within the command who require training. For the purposes of this provision, a “5-level or higher paralegal” includes a civilian paralegal who:

32.3.2.1. Carries a 5-level paralegal certification as a Reservist, or

32.3.2.2. Prior to entering civilian service, served as a Regular Air Force or Space Force paralegal with a 5-level or higher certification.

32.3.3. If it is not practicable for a member to receive the briefing through myLearning or in-person, the member may be briefed by a qualified briefer via telephone, video teleconference or other remote means.

32.3.4. Documenting the training.

32.3.4.1. The servicing legal office will coordinate with the FSS to ensure all personnel have completed the myLearning training as required in this instruction.

32.3.4.2. If the legal office conducts an in-person myLearning briefing, the legal office must record all in-person attendance for enlisted, officers, and commanders through documentation provided to the member (e.g., memorandum, sign-in sheets, or other means) to allow for verification by the member's UTM that the specific individual received the mandatory training.

32.3.4.3. For all other methods of completion ensure documentation of the member's completion.

32.3.5. Frequency, Content and Duration. The SJA determines the frequency content, and duration of training sessions, provided they meet the requirements of this chapter.

32.4. Enlisted Completion Requirements.

32.4.1. Complete the initial explanation within 14 calendar days of the entry of enlisted personnel on active duty; **(T-0)**.

32.4.2. Complete the six-month explanation for enlisted personnel within 30 calendar days of the last day of the month in which the individual completed six months of active duty; **(T-0)**. and

32.4.3. Complete the reenlistment explanation within 30 calendar days of an individual's reenlistment.

32.4.4. Enlisted members of the Reserve or Air National Guard receive the initial explanation within 14 calendar days of initial entrance on a duty status with an air reserve component, again after completing basic training, and at the time of reenlistment.

32.5. Officer Completion Requirements.

32.5.1. Complete officer training within six months of commissioning, regardless of whether initial commissioning is in a reserve component or Regular Air Force or Space Force. **(T-0)**.

32.5.2. The SJA for the Holm Center, Maxwell Air Force Base, ensures trainees in Officer Training School receive the required briefing prior to graduation..

32.5.3. The SJA at each Training Wing (or Space Force equivalent) ensures officers who commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training.

32.5.4. The SJA for USAFA ensures cadets receive the required briefing from instructors at USAFA within 14 calendar days of entry on active duty.

Section 32B—Required Commander Training

32.6. Overview. In addition to the training in [Section 32A](#), commanders must accomplish two additional trainings: training on the role of a commander in all stages of military justice in connection with sexual assault; and military justice-specific training covering, at a minimum, search authorizations, no contact and protective orders; and commander-specific indexing and firearm prohibition requirements.

32.6.1. **Timing.** SJAs ensure commanders receive all three trainings (Article 137, UCMJ, and the two additional required commander trainings) prior to conducting the legal sufficiency reviews of their G-series orders, when practicable. **(T-0).** In the event an officer is not able to complete all the required commander training prior to being placed on G-series orders, the trainings must be accomplished within 30 days of appointment to or assumption of command. This includes commanders placed on temporary orders periodically, for whom training is good for 365 days.

32.6.2. **Content.**

32.6.2.1. The VMJD contains templates for the additional commander-specific trainings.

32.6.2.2. Part two of the training consist of training required by FY 2020 NDAA, Section 540B.

32.6.2.2.1. At a minimum, this training must cover the following topics: **(T-0).**

32.6.2.2.1.1. The role of commanders in each stage of the military justice process in connection with allegations of sexual assault committed by a service member;

32.6.2.2.1.2. The role of commanders in assuring victims of sexual assault are informed of, and have the opportunity to obtain, assistance available for victims;

32.6.2.2.1.3. The role of commanders in assuring victims of sexual assault are afforded the rights and protections available for victims;

32.6.2.2.1.4. The role of commanders in preventing retaliation against victims, their family members, witnesses, first responders, and bystanders for their complaints, statements, testimony, and status in connection with allegations sexual assault, including the role of commanders in ensuring subordinates in the command are aware of their responsibilities in preventing such retaliation;

32.6.2.2.1.5. The role of commanders in establishing and maintaining a healthy command climate in connection with reporting on sexual assault, and in the response of the commander, subordinates in the command, and other personnel in the command to such sexual assault, such reporting, and the military justice process in connection with such sexual assault; and

32.6.2.2.1.6. Any other matter on the role of commanders in connection with sexual assault that the Secretary of Defense deems appropriate.

32.6.2.2.2. The SJA is responsible for ensuring commanders receive this training in accordance with [paragraph 32.6.1](#) A template for the required training is located on the VMJD.

32.6.2.3. Part three of the training is intended to provide education and training on remaining matters within the military justice system that involve a command responsibility, but may not be covered in part two. This training ensures that commanders throughout the Air Force and Space Force are best equipped to handle instances that may arise in their units which impact good order and discipline.

32.6.2.3.1. This training covers, at a minimum, search authorization under M.R.E. 315; “no-contact” orders, MPOs, and CPOs; and commander-specific indexing and firearm

prohibition requirements. Additional topics may be covered at the discretion of the SJA and installation commander.

32.6.2.3.2. The SJA is responsible for ensuring commanders receive this training in accordance with [paragraph 32.6.1](#).

Section 32C—Status of Discipline Briefings

32.7. Overview. A Status of Discipline (SOD) briefing will be conducted by the legal office on behalf of the installation commander or equivalent installation authority on at least a quarterly basis. The intent of the briefing is to facilitate discussion across the installation regarding trends in military justice and discipline, as well as identifying areas of concern among the base's population.

32.7.1. The SJA supporting the installation commander facilitates the SOD briefing. Installation commanders and SJAs are encouraged to invite host and tenant commanders and first sergeants. Pursuant to the direction of the installation commander, the SJA may invite additional personnel to all or specific SOD briefings. For example, vice and deputy commanders, superintendents, and OSI and Security Forces senior investigators may be invited to all SOD briefings while the SARC, VC, or ADC may be invited to participate in a portion of a specific SOD briefing.

32.7.2. The content of the SOD briefing may vary based on the installation. The SJA and legal office staff will create the briefing materials and coordinate as necessary and appropriate. AMJAMS and Web-Based Administrative Separation Program (WASP) are used to generate the briefing slides. For briefings involving Air Force personnel, data will include the squadron (where required in [paragraph 32.8](#), et seq.) wing, NAF, MAJCOM, and Air Force numbers, as applicable. For briefings involving Space Force personnel, data will include the data for all equivalent organizations (e.g., garrison, delta, FLDCOM, and Space Force).

32.8. Minimum Requirements. The following items will be discussed at Status of Discipline briefing:

32.8.1. Results of trial for courts-martial closed in the quarter. Do not disclose the name of an accused who was acquitted of all charges and specifications. This requirement does not apply to traditional reserve units; however, traditional reserve units will discuss closed cases where recall was initiated and a judicial proceeding resulted.

32.8.2. Court-martial processing times for courts-martial completed through Record of Trial forwarding in the quarter; and for the wing or garrison, superior commands through the MAJCOM/FLDCOM, and DAF, for the year-to-date. See [paragraph 32.7.2](#).

32.8.3. Information on NJP actions completed through SJA review in the quarter. This includes supplemental actions (suspension, mitigation, remission, and set aside). Do not disclose any names of individuals who were offered or received NJP. The SJA is encouraged to have the responsible commanders brief their squadron's NJP actions.

32.8.4. NJP processing times for NJP actions completed through SJA review by squadron or equivalent, superior commands through the MAJCOM/FLDCOM, and DAF for year-to-date. See [paragraph 32.7.2](#).

32.8.5. Information on involuntary discharge cases completed through discharge or retention in the quarter. This includes cases involving Probation and Rehabilitation (P&R) and the status of those P&R cases. Do not disclose any names of individuals notified of discharge, discharged, or retained. The SJA is encouraged to have the responsible commanders brief their squadron's discharge cases. Briefing of individual discharge cases is not required for entry-level status discharges.

32.8.6. Discharge processing times for enlisted notification and board cases for discharge cases completed through discharge by squadron or equivalent, superior commands through MAJCOM/FLDCOM, and DAF year-to-date. See [paragraph 32.7.2](#).

32.8.7. At least once per calendar year, rates per thousand for courts-martial and NJP listed by the applicable levels of command described in [paragraph 32.7.2](#) for: overall and by officer/enlisted, gender, and race. The requirement for discussion of courts-martial does not apply to traditional reserve units.

32.8.8. Special interest items identified by the wing or garrison commander, or the SJA, such as alcohol-related incidents, drug offenses, and unlawful command influence. Examples of topics are available on the VMJD.

32.8.9. Training specific to the installation military justice issues. Templates and topic ideas are available on the VMJD.

Chapter 33

STAFF JUDGE ADVOCATE SUPPORT TO EXTERNAL PROGRAMS

Section 33A—Staff Judge Advocate’s Responsibilities to Defense Counsel

33.1. The ADC Program. The ADC Program is one of the great strengths of the military justice system and will continue to be so as long as the defense function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions and to treat the ADC as equal with the prosecution function at the bar of justice.

33.2. Staff Judge Advocate Responsibilities.

33.2.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the ADC function. SJAs are charged with providing commanders candid and objective advice on all legal matters, especially in regard to military justice. An SJA is responsible for ensuring the government is well represented and its personnel are properly trained to execute their various military justice responsibilities. In executing their duties, SJAs are expected to execute multiple roles and responsibilities in safeguarding the justice process and in enhancing good order and discipline, to include properly preparing counsel and effectively providing command with an unbiased perspective and legal advice on the full range of military justice options, which take into account the needs of all the parties involved, the mission, and the DAF.

33.2.2. The SJA’s position and seniority demands that they set the tone for how military justice is viewed across the installation by maintaining open lines of communication with defense counsel, promoting civility in practice, and maintaining a productive relationship within the legal community. The SJA must never make denigrating, demeaning, or hostile comments about the ADC nor condone such comments by others. Instead, when the SJA considers it necessary to question or criticize the actions of the ADC, the SJA will raise such matters through the ADC’s supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the defense bar, vigorous promotion of defense independence, and appropriate recognition of the ADC’s achievements.

33.2.3. The quality of the ADC’s facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit ADC offices will not perceive the system is operating on a level playing field unless defense facilities and equipment achieve this standard. SJAs are responsible for assisting ADCs in obtaining and maintaining suitable facilities and equipment.

Section 33B—Staff Judge Advocate’s Responsibilities to Victims’ Counsel

33.3. The Victims’ Counsel Program. The VC Program is one of the great strengths of the military justice system and will continue to be so as long as the VC function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions.

33.4. Staff Judge Advocate Responsibilities.

33.4.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the VC Program.

33.4.2. The SJA's position and seniority demands that they set the tone for how military justice is viewed across the installation by maintaining open lines of communication with the VC, promoting civility in practice, and maintaining a productive relationship within the legal community. If the SJA considers it necessary to question or criticize the actions of the VC, the SJA will raise such matters through the VC's supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the members of the VC program, vigorous promotion of the VC Program's independence, and appropriate recognition of the VC's achievements.

33.4.3. The quality of the VC's facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit VC offices will not perceive the system is operating on a level playing field unless the facilities and equipment achieve this standard. SJAs are responsible for assisting VCs in obtaining and maintaining suitable facilities and equipment.

33.4.4. The VC program is separate and distinct from VWAP. The SJA must ensure legal office personnel understand the distinction between the two programs. VWAP responsibilities are not abrogated by a victim's representation by counsel.

Section 33C—Support of Defense Sexual Assault Incident Database (DSAID)

33.5. Defense Sexual Assault Incident Database. The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01, and DoDI 6495.02, *Sexual Assault Prevention and Response: Program Procedures, Volume 1*. The DSAID captures available information, not limited by restricted reporting or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. The DSAID is used to implement annual Congressional reporting requirements. The DSAID is maintained at base level by the installation SARC and requires information, as necessary, from appropriate base agencies to complete designated data fields.

33.5.1. The base SJA provides the SARC with disposition data on DSAID cases resulting from unrestricted reports of sexual assault and independent investigations (see [paragraph 19.10](#)) by completing the DSAID Subject Case Disposition form. In accordance with DoDI 6495.02, Volume 1, Appendix to Enclosure 12, the data to be provided includes information about: pretrial confinement; punitive, corrective, or discharge actions; command actions; case synopses; and relevant case dates. In the event a case does not proceed to trial, or does not result in NJP, disposition information will also include: the type of administrative action (e.g., LOA, LOC, LOR, discharge); whether the administrative action was for a sexual assault related offense or non-sexual assault related offense; and, if administrative discharge is being pursued, the characterization of discharge. Additional DSAID data may also be required as necessary. Refer to the VMJD for updates.

33.5.2. The requested DSAID Subject Case Disposition form will be accurate and complete and provided to the SARC as soon as possible upon request.

Chapter 34

REQUESTS FOR AND RELEASE OF INFORMATION

Section 34A—Extrajudicial Statements and Release of Information

34.1. General Provision. Information may not be disseminated if it could reasonably be expected to interfere with law enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudication in a criminal proceeding. The determination of whether a release of information is permissible includes an assessment of the type and details of information to be released and its source, the type of proceeding, and the stage of the proceeding. The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, implementing directives, security requirements, judicial orders protecting information, and applicable laws such as the Privacy Act, FOIA, and the Victim and Witness Protection Act. **Paragraph 34.2.1** discusses FOIA's required balancing test concerning the privacy rights of an accused. **Paragraph 31.3** discusses the release of AMJAMS information.

34.1.1. DAF representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

34.1.2. This section does not apply to the release of information by military or civilian defense counsel. However, defense counsel, both military and civilian, must comply with the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice, portions of which address trial publicity by defense counsel. Military defense counsel must comply with the requirements and restrictions of FOIA and the Privacy Act with respect to the release of DAF records. **(T-0)**.

34.2. Extrajudicial Statements. Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication. There are valid reasons for making certain information available to the public in the form of extrajudicial statements, when such release otherwise complies with applicable rules and regulations as described in **paragraph 34.1**. However, extrajudicial statements should not be used for the purpose of influencing the course of a criminal proceeding. Usually, extrajudicial statements should include only factual matters and should not offer subjective observations or opinions. The question of whether a statement is extrajudicial will depend upon the circumstances.

34.2.1. Under the Privacy Act, information from a system of records, such as a court-martial file maintained in a judge advocate office about an individual, may not be released to the public without the individual's consent unless release is required by FOIA. **(T-0)**. FOIA requires release except when specified circumstances exist, one of which is when release would constitute an unwarranted invasion of an individual's personal privacy. See 5 U.S.C. § 552a(b) and 5 U.S.C. §§ 552(b)(6) and 552(b)(7)(C).

34.2.1.1. An unwarranted invasion of personal privacy exists when an individual's privacy interests outweigh the public's interest in disclosure of the information. See *Chang v. Dep't of the Navy*, 314 F. Supp. 2d 35 (D.D.C. 2004). The public's interest is defined by the degree to which disclosure sheds light on the performance of an agency's statutory function. *Dep't of Justice v. Reporters Comm.*, 489 U.S. 749 (1989). This can include

information about how the government holds its employees accountable. See *Schmidt v. Dep't of the Air Force*, 2007 U.S. Dist. LEXIS 69584 (C.D. Ill. 2007).

34.2.1.2. Whether disclosure of data regarding the accused and the alleged offenses constitutes an unwarranted invasion of privacy depends upon the assessment of whether the accused has a reasonable expectation of privacy as measured by various factors, including, but not limited to, the accused's rank, duties, alleged offense(s), existing publicity about the allegation(s), and stage of the proceedings. Considering the fact that anyone subject to the UCMJ can act as an accuser under the UCMJ, the accused normally retains a reasonable expectation of privacy upon preferral of charges. When the convening authority directs the charges toward a public forum, such as an Article 32, UCMJ, hearing or referral to trial, the accused's reasonable expectation of privacy begins to decline.

34.2.2. Extrajudicial Statements After Disposition. Employing the FOIA balancing test described above, the information release authority may normally release the following information after the convening authority has disposed of preferred charges by directing an Article 32, UCMJ, preliminary hearing or has referred the charges to a court-martial:

34.2.2.1. The accused's name, unit and assignment;

34.2.2.2. The substance or text of charges and specifications, provided there is a statement included explaining that the charges are merely accusations and that the accused is presumed innocent until and unless proven guilty. As necessary, redact all Victim and Witness Protection Act and Privacy Act protected data from the charges and specifications (such as the names of all victims, signature of the accuser, and SSN of the accused).

34.2.2.3. The scheduling or result of any stage in the judicial process;

34.2.2.4. Date and place of trial and other proceedings, or anticipated dates, if known;

34.2.2.5. Identity and qualifications of appointed counsel;

34.2.2.6. Identities of convening and reviewing authorities;

34.2.2.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or that the accused denies the charges; and

34.2.2.8. Generally, do not release the names of victims of sex offenses, the names of children, or the identity of any victim when release would be contrary to the desire of the victim or harmful to the victim. Otherwise, the identity of the victim may be disclosed where the release of that information is not otherwise prohibited by law.

34.2.2.9. Exceptional cases may warrant earlier release of information but, prior to any earlier release, the relevant authority should apply a public interest balancing test, assess the reasonable expectation of privacy factors, and exercise due caution.

34.2.3. Disclosing the Identities of Court Members and the Military Judge. Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may normally be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding, and the SJA to the convening authority determines release would not prejudice the accused's rights or violate the members' or the military judge's privacy interests.

34.2.4. A written or oral request for information from the media or public is not required prior to release, nor does a media request indicate that information is automatically releasable.

34.2.5. Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings. The following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

34.2.5.1. General information to educate or inform the public concerning military law and the military justice system;

34.2.5.2. If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

34.2.5.3. Requests for assistance in obtaining evidence and information necessary to obtain evidence;

34.2.5.4. Facts and circumstances of an accused's apprehension, including the time and place of apprehension, if requested or otherwise in the best interest of the DAF and after applying FOIA exemption principles, as appropriate;

34.2.5.5. The identities of investigating and apprehending agencies, and the length of the investigation, only if release of this information will not impede an ongoing or future investigation, and the release is coordinated with the affected agencies;

34.2.5.6. Information contained in a public record, without further comment; and

34.2.5.7. Information that protects the military justice system from matters that have a substantial likelihood of materially prejudicing the proceedings. Information in the form of extrajudicial statements shall be subject to [paragraph 34.2](#) and limited to that which is necessary to correct misinformation or to mitigate the substantial undue prejudicial effect of information or publicity already available to the public. This can include, but is not limited to, information that would have been available to a spectator at an open Article 32, UCMJ preliminary hearing or an open session of a court-martial.

34.2.5.7.1. Unless TJAG has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the MAJCOM or FLDCOM SJA (or equivalent) coordinates on release of this information by the appropriate command authority.

34.2.5.7.2. If TJAG has withheld the authority to coordinate on release of extrajudicial statements, requests for TJAG coordination must be forwarded through the MAJCOM or FLDCOM SJA to JAJM by the most expeditious means appropriate to the sensitivity of the information.

34.2.6. Impermissible Extrajudicial Statements. Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and should not be made:

34.2.6.1. The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

34.2.6.2. Observations about the accused's character and reputation;

34.2.6.3. Opinions regarding the accused's guilt or innocence;

34.2.6.4. Opinions regarding the merits of the case or the merits of the evidence;

34.2.6.5. References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations, and ballistics or laboratory tests), the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

34.2.6.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

34.2.6.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

34.2.6.8. Information that trial counsel knows or has reason to know would be inadmissible as evidence in a trial; and

34.2.6.9. Before sentencing, facts regarding the accused's disciplinary or criminal record, including NJPs, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Generally, do not release information or statements about NJPs or administrative actions, or related documents even after sentencing unless admitted into evidence. This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record.

34.2.7. Responsibility for Extrajudicial Statements. The release of extrajudicial statements is a command responsibility. The convening authority responsible for the criminal proceeding makes the ultimate decision about release of extrajudicial statements relating to that criminal proceeding, though coordination with MAJCOM or FLDCOM SJAs is encouraged. MAJCOM or FLDCOM (or equivalent) commanders may withhold release authority from subordinate commanders.

34.2.7.1. The installation SJA and the installation Public Affairs officer must work closely together to provide informed advice to the commander. SJAs should consult with their MAJCOM or FLDCOM SJAs when there is a question about the nature of a statement proposed for release. If the extrajudicial statement is based on information contained in agency records, the office of primary responsibility for the record should also coordinate on the extrajudicial statement prior to release. In high interest cases, the SJA and the public affairs officer should consult with their MAJCOM or FLDCOM representatives, and JAJM as necessary.

34.2.7.2. The SJA, trial counsel and defense counsel ensure investigators, law enforcement personnel, employees and other persons assisting or associated with the respective counsel do not make extrajudicial statements that counsel are prohibited from making.

34.3. Release of Information from Records of Trial or Related Records. Once a completed record is forwarded to JAJM, JAJM is the disclosure authority for all records and associated documents. This subsection is not intended to delay compliance with Article 140a, UCMJ. See [Section 34D](#). This subsection does not apply to documents or records that originate outside the military justice system of records (e.g., OSI reports). The disclosure authority for such documents and records is the office of primary responsibility (OPR) for those records under the provisions of AFI 33-332, *Air Force Privacy and Civil Liberties Program*, and/or DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*.

34.3.1. Release of Record of Trial. R.C.M. 1112(b) defines a court-martial ROT. A ROT is subject to release determination under FOIA and the Privacy Act. Information marked as classified, controlled, or sealed by judicial order should not be released unless authorized by proper authority (e.g., military judge). A transcript of oral proceedings is not a record until certification. When releasing ROTs under this paragraph, redact Privacy Act protected data and other sensitive information, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity. **(T-0).**

34.3.2. Attachments to the ROT. R.C.M. 1112(f) and DAFMAN 51-203 list the attachments to a ROT (e.g., transcript). Attachments are not considered part of the ROT, so they would not be included in a release seeking the “record of trial.” However, if the attachments are specifically requested for release, then they are subject to a release determination under FOIA and the Privacy Act, as described in the previous paragraph.

34.3.3. Release of Other Military Justice Documents or Records. All other documents or records that are not made part of the ROT or attached to the ROT are also subject to release determination under the Privacy Act and FOIA. However, due regard will be given to the potentially heightened privacy interests of an accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. **(T-0).** Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity. **(T-0).**

34.3.4. Cases Disposed of by Acquittal or Action Other Than Court-Martial. When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. See *ACLU v. Dep’t of Justice*, 750 F.3d 927 (D.C. Cir. 2014). Less serious misconduct, which is handled administratively rather than judicially, is usually not considered of sufficient public interest to outweigh the privacy interest of the individual.

34.3.5. Requests for Information from Law Enforcement Agencies. Disclose data about the accused, the charges, and the evidence in accordance with Blanket Routine Uses and SORN Routine Uses concerning military justice records. See <http://dpcl.o.defense.gov/privacy/Privacy/DODComponentArticleList/tabid/6799/Category/277/departments-of-the-armed-forces.aspx>.

Section 34B—Direct Communications and Reports

34.4. JAJM Requests for Information.

34.4.1. JAJM and JAJI routinely receive inquiries concerning military justice cases and rely on information from base-level legal offices to answer the inquiries. Complete, accurate and timely responses to requests for information are critical. To that end, JAJM and JAJI may

communicate directly with any legal office at any level of command. It is incumbent on the contacted SJA or designee to coordinate with intermediate levels of command. Contact or requests from JAJM or JAJI to a legal office should not be construed as criticism of case handling or as a mandate for any particular action in a case.

34.4.2. **Responses.** Generally, the SJA or designee should respond to JAJM via e-mail directly to the requestor or to AF.JAJM.SIR.Workflow@us.af.mil. All responses should include:

- 34.4.2.1. Detailed answers to any specific questions asked;
- 34.4.2.2. Case information, including details about the subject or accused and any relevant incidents and allegations;
- 34.4.2.3. Case background and any unique or significant aspects of the case; and
- 34.4.2.4. As necessary and appropriate, mark and protect information as Privacy Act-protected or CUI.

34.4.3. **Responses Involving Courts-Martial.** In addition to the information described in [paragraph 34.4.2](#), include the following information for courts-martial to the extent that such information is not otherwise capture in AMJAMS:

- 34.4.3.1. Dates and nature of pretrial restraint or confinement and associated proceedings;
- 34.4.3.2. Type of court-martial and summary of charges and specifications;
- 34.4.3.3. Dates of preferral, referral and trial;
- 34.4.3.4. Information about the Article 32, UCMJ, preliminary hearing, including who directed it, identity of accused's counsel and victim's counsel, if any, names of government and defense witnesses, summary of witness testimony and evidence presented, and the PHO's findings and recommendations;
- 34.4.3.5. Summary of witness testimony and evidence;
- 34.4.3.6. Pleas, findings, sentence, and court composition;
- 34.4.3.7. Any history of misconduct of the accused;
- 34.4.3.8. Date and action of the convening authority;
- 34.4.3.9. Date and outcome of Article 64, UCMJ, review, if an SCM;
- 34.4.3.10. Date ROT forwarded to JAJM; and
- 34.4.3.11. Information concerning post-trial confinement, excess leave, and other post-trial matters.

34.4.4. **Responses Involving NJP.** In addition to the information described in [paragraph 34.4.2](#), include the following information for NJP: names, dates, and elections for the NJP action; summary of charged misconduct; imposing commander's findings; imposed NJP; appeal outcome; and information on related matters, such as Unfavorable Information File (UIF), Officer Selection Record (OSR), and discharge.

34.4.5. Responses Involving Civilian Jurisdiction. In addition to the information described in [paragraph 34.4.2](#), include the following information for cases involving civilian jurisdiction:

- 34.4.5.1. Jurisdiction involved and status of waiver request;
- 34.4.5.2. Charges;
- 34.4.5.3. Detention or confinement;
- 34.4.5.4. Place and dates of civilian proceedings;
- 34.4.5.5. Name of defense counsel, if any;
- 34.4.5.6. Summary of the evidence;
- 34.4.5.7. Maximum authorized punishment;
- 34.4.5.8. Pleas, findings, and sentence;
- 34.4.5.9. Appeal;
- 34.4.5.10. Administrative or disciplinary action taken or contemplated by military authorities.

34.5. Field Response to High-Level Inquiry. When a legal office receives and responds directly to a high-level inquiry, such as a congressional inquiry, concerning a military justice case or matter, retain a copy of the inquiry and response. AFI 90-401, *Air Force Relations with Congress*, Chapter 3, provides additional guidance.

Section 34C—Reporting Cases Involving Foreign-National DAF Members

34.6. Foreign-National DAF Member Defined. A DAF member who is a national of a foreign country and who is not a citizen or national of the United States. For purposes of this section, any DAF member who claims to be a foreign national shall be considered so.

34.7. When to Report. Notify JAO when a foreign-national DAF member is:

- 34.7.1. Apprehended under circumstances likely to result in confinement or trial by court-martial, and states that they are a foreign national;
- 34.7.2. Ordered into arrest or confinement;
- 34.7.3. Held for trial with or without any form of restraint; or
- 34.7.4. Pending court-martial charges that have been referred for trial.

34.8. What to Report. Include in the notification the following:

- 34.8.1. The name, grade, SSN, organization and station of the member;
- 34.8.2. Any evidence, including information from the member's military record, that is inconsistent with a claim of foreign nationality;
- 34.8.3. A thorough description of the offenses, including dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide clear understanding of the facts and circumstances involved, and any other unusual or significant features of the case;

34.8.4. The name of defense counsel, if any; and

34.8.5. The exact and current location of the member (e.g., Joint Base Andrews confinement facility).

34.9. Examination of Member's Records. Whenever charges against a foreign national DAF member are referred for trial, the SPCMCA's SJA has the member's military records examined to ascertain the member's nationality, even if the member has not entered a claim of foreign nationality.

34.10. Notification Not Required. Notification is not required:

34.10.1. For issues resulting in NJP or administrative action, or

34.10.2. If the foreign national DAF member is apprehended or confined in anticipation that only NJP or administrative action is contemplated.

34.10.3. When a foreign national is charged with a crime, arrested, confined or detained in custody by the civil authorities of the United States, or any political subdivision, possession or territory thereof, or by the authorities of any foreign government.

Section 34D—Article 140a, UCMJ, Guidance

34.11. General Provision. In accordance with Article 140a, UCMJ, the DAF must post certain court-martial filings, pleadings and records on a public facing website. Such postings must be in compliance with the Privacy Act. All redactions should be completed in black. This applies to all redactions required by this Instruction, including but not limited to discovery, releases, and Article 140a, UCMJ, postings.

34.12. Applicability. This requirement applies only to GCMs and SPCMs in which charges were preferred on or after 23 December 2020. It applies to such records at both the trial and appellate level.

34.13. JAJM Article 140a, UCMJ, Redaction Guide. Practitioners shall comply with the requirements of the JAJM Article 140a, UCMJ, Redaction Guide, which provides standards, references, and training for individuals responsible for redacting and reviewing these documents to ensure compliance with the Privacy Act. **(T-0).** The Article 140a, UCMJ, Redaction Guide is located on the VMJD.

34.14. Timing and Process. Upon certification of the record of trial in cases resulting in a guilty finding for at least one charge and specification, post court-martial filings and records to the designated public-facing website in accordance with the JAJM Article 140a, UCMJ, Redaction Guide.

34.15. The Judge Advocate General's Corps DAF Docket. The DAF Docket is the designated public facing website through which the public may view the dates of upcoming courts-martial, the results of past courts-martial, and access redacted filings and court records posted pursuant to Article 140a, UCMJ. In order to facilitate public access to the docket, all installation legal offices are required to coordinate with their servicing Public Affairs office to ensure the hyperlink to the DAF Docket is posted on each installation-specific, publically accessible website. A prominent location on the website is desirable to reflect the importance of the information and to assist the large number of anticipated visitors.

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34.15.1. The location of the link shall display the following language: “Follow this link for access to the DAF Docket, which lists pending and completed courts-martial under the respective tabs at the top of the page. Results may be filtered by date range, base, or location.”

34.15.2. The hyperlink to the Air Force Docket is:
<https://legalassistance.law.af.mil/AMJAMS/PublicDocket/docket.html>

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Uniform Code of Military Justice (10 U.S.C. § 801, et seq)

Manual for Courts-Martial, United States, 2019 Edition

Privacy Act (5 U.S.C. § 552a)

10 U.S.C. § 802, *Persons subject to this chapter*

10 U.S.C. § 854, *Record of trial*

10 U.S.C. § 865, *Disposition of records*

10 U.S.C. § 9013, *Secretary of the Air Force*

10 U.S.C. § 8037, *Judge Advocate General*

10 U.S.C. § 1044, *Legal assistance*

10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*

10 U.S.C. § 1561a, *Civilian orders of protection: force and effect on military installations*

10 U.S.C. § 1565, *DNA identification information: collection from certain offenders; use*

10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*

10 U.S.C. § 2005, *Advanced education assistance: active duty agreement; reimbursement requirement*

10 U.S.C. § 12301, *Reserve components generally*

10 U.S.C. § 12302, *Ready Reserve*

10 U.S.C. § 12310, *Reserves: for organizing administering, etc., reserve components*

10 U.S.C. Chapter 61, *Retirement or Separation for Physical Disability*

18 U.S.C. 921, *Definitions*

18 U.S.C. § 922, *Unlawful acts*

18 U.S.C. § 2511, *Definitions for chapter*

18 U.S.C. § 2522, *Enforcement of the Communications Assistance for Law Enforcement Act*

18 U.S.C. § 2523, *Executive agreements on access to data by foreign governments*

18 U.S.C. § 2703, *Required disclosure of customer communications of records*

18 U.S.C. § 2705, *Delayed notice*

18 U.S.C. § 2711, *Definitions for chapter*

18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*

18 U.S.C. § 3261, et seq, *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act of 2000)*

18 U.S.C. § 3509, *Child victims' and child witnesses' rights*

21 U.S.C. § 802, *Definitions*

28 U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*

32 U.S.C. § 325(a), *Relief from National Guard duty when ordered to active duty*

34 U.S.C. § 20911, et seq, *Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators*

34 U.S.C. § 40702, *Collection and use of DNA identification information from certain Federal offenders*

37 U.S.C. § 303a, *Special Pay: general provisions*

37 U.S.C. § 401, *Definitions*

38 U.S.C. § 5303A, *Minimum active-duty service requirement*

42 U.S.C. § 290dd-2, *Confidentiality of records*

Pub. L. 109-248, *Adam Walsh Child Protection and Safety Act, 2006*

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27 C.F.R. § 478.11, *Meaning of terms*

28 C.F.R. §§ 20.30, et seq., *Federal Systems and Exchange of Criminal History Record Information*

28 C.F.R. § 28.12, *Collection of DNA samples*

EO 13825, *2018 Amendments to the Manual for Courts-Martial, United States, 1 March 2018*
Joint Travel Regulations, 1 October 2021

DoDD 6495.01, *Sexual Assault Prevention and Response (SAPR) Program, 23 January 2012, Incorporating Change 5, November 10, 2021*

DoDI 1332.18, *Disability Evaluation System, 17 May 2018*

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DoDI 5505.09, *Interception of Wire, Electronic and Oral Communications for Law Enforcement, 27 November 2013*

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DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirement for Criminal Investigations, Law Enforcement, Corrections, and Commanders, 22 December 2015*

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AFI 36-2909, *Air Force Professional Relationships and Conduct*, 14 November 2019

AFI 36-3003, *Military Leave Program*, 24 August 2020

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AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, 15 July 2019

AFI 38-101, *Manpower and Organization*, 29 August 2019

AFI 41-200, *Health Insurance Portability and Accountability Act (HIPPA)*, 25 July 2017

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AF Form 304, *Request for Appellate Defense Counsel*

Adopted Forms

AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*

AF Form 847, *Recommendation for Change of Publication*

DD Form 458, *Charge Sheet*

DD Form 456, *Interrogatories and Depositions*

DD Form 457, *Preliminary Hearing Officer's Report*

DD Form 493, *Extract of Military Records of Previous Convictions*

DD Form 453, *Subpoena*

DD Form 1722, *Request for Trial Before Military Judge Alone*

DD Form 2707, *Confinement Order*

DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts- Martial Subject to Review by a Court of Military Review*

DD Form 2329, *Record of Trial by Summary Court-Martial*

DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*

DD Form 2873, *Military Protective Order*

DD Form 2707-1, *Department of Defense Report of Result of Trial*

Abbreviations and Acronym

ADC—Area Defense Counsel

AFCCA—Air Force Court of Criminal Appeals

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFJAGS—Air Force JAG School

AFPC—Air Force Personnel Center

AFPD—Air Force Policy Directive

AFSFC—Air Force Security Forces Center

AFRC—Air Force Reserve Command

AMJAMS—Automated Military Justice Management System

ANG—Air National Guard

ARC—Air Reserve Component

CAAF—United States Court of Appeals for the Armed Forces

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CADAM—Convening Authority’s Decision on Action Memorandum

CCDC—Chief Circuit Defense Counsel

CCVC—Chief Circuit Victims’ Counsel

CDC—Circuit Defense Counsel

CTC—Circuit Trial Counsel

CDI—Commander Directed Investigation

C.F.R.—Code of Federal Regulations

CODIS—Combined DNA Index System

CUI—Controlled Unclassified Information

DAF—Department of the Air Force

DAFI—Department of the Air Force Instruction

DAFMAN—Department of the Air Force Manual

DAFPD—Department of the Air Force Policy Directive

DFAS—Defense Finance & Accounting Services

DIBRS—Defense Incident-Based Reporting System

DJAG—Deputy Judge Advocate General

DNA—Deoxyribonucleic Acid

DoD—Department of Defense

DoDD—Department of Defense Directive

DoDI—Department of Defense Instruction

DP—Defense Paralegal

DPM—Defense Paralegal Manager

DSAID—Defense Sexual Assault Incident Database

DSJA—Deputy Staff Judge Advocate

DTO—Director of Trial Operations

EoJ—Entry of Judgment

FAP—Family Advocacy Program

FLDCOM—Field Command

FOIA—Freedom of Information Act

FLITE—Federal Legal Information Through Electronics

GCM—General Court-Martial

GCMCA—General Court-Martial Convening Authority

IG—Inspector General

IMDC—Individual Military Defense Counsel

JAC—Civil Law and Litigation Directorate

JAJ—Judiciary Directorate

JAJA—Appellate Defense Division

JAJD—Trial Defense Division

JAJG—Government Trial and Appellate Operations Division

JAJI—Military Justice Investigations and Information Division

JAJM—Military Justice Division

Jajs—Victims’ Counsel Division

JAT—Air Force Trial Judiciary

LIO—Lesser Included Offense

LOC—Letter of Counseling

LOR—Letter of Reprimand

LRO—Local Responsible Official

MAJCOM—Major Command

MCM—Manual for Courts-Martial

MEJA—Military Extraterritorial Jurisdiction Act

MPO—Military Protective Order

M.R.E.—Military Rule of Evidence

NAF—Numbered Air Force

NCIC—National Crime Information Center

NCO—Non-commissioned Officer

NICS—National Instant Background Check System

NJP—Nonjudicial Punishment

OSI—Office of Special Investigations

OSR—Officer Selection Record

PCRO—Pretrial Confinement Review Officer

PHO—Preliminary Hearing Officer

PII—Personally Identifiable Information

R.C.M.—Rules for Courts-Martial

ROI—Report of Investigation

ROT—Record of Trial

ROTC—Reserve Officers' Training Corps

SAPR—Sexual Assault Prevention and Response

SARC—Sexual Assault Response Coordinator

SCM—Summary Court-Martial

SIR—Special Interest Report

SJA—Staff Judge Advocate

SOD—Status of Discipline

SORN—System of Records Notice

SPCM—Special Court-Martial

SPCMCA—Special Court-Martial Convening Authority

SSN—Social Security Number

STR—Statement of Trial Results

SVIP—Special Victims Investigation and Prosecution Capability

TAG—Adjutant General

TJAG—The Judge Advocate General

UCMJ—Uniform Code of Military Justice

UIF—Unfavorable Information File

USAFA—United States Air Force Academy

USACIL—United States Army Criminal Investigations Laboratory

U.S.C.—United States Code

VA—Victim Advocate

VC—Victims' Counsel

VMJD—Virtual Military Justice Deskbook

VWAP—Victim and Witness Assistance Program

WASP—Web-Based Administrative Separation Program

Terms

Adjudged Forfeitures—Forfeitures of pay and/or allowances announced as part of a sentence in a court-martial. See Article 57, UCMJ.

Central Repository—A central organization for confinee information, charged with establishing procedures to ensure victims are notified of changes in confinee status, if they so elect.

Component Responsible Official—The Air Force official responsible for coordinating, implementing and managing the Air Force VWAP. TJAG is the Air Force component responsible official.

Court-Martial Convening Authority—A commander or equivalent person that exercises court-martial convening authority powers as set out in the UCMJ and MCM. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.

Crime of Domestic Violence—An offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. The alleged offender must be: (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, (5) a person similarly situated to a spouse, parent or guardian of the victim. 18 U.S.C. § 922.

Child Victim—The definition of child victim varies based on the offense. Practitioners must consult the MCM to determine which definition of child victim applies.

Contingent Confinement—Confinement authorized by a court-martial in the form of a fine-enforcement provision.

Defense Sexual Assault Incident Database—The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01 and DoDI 6495.02.

Deferment of Forfeitures—Delaying the effective date of the beginning of forfeitures of pay and/or allowances. See Article 57, UCMJ.

Department of the Air Force—Service component of the Department of Defense which consists of the United States Air Force and United States Space Force, overseen by the SecAF.

Dependent—Generally, the spouse, unmarried child, parent of the member, or person in the member's legal custody, if those persons meet certain criteria. For further information, see 37 U.S.C. § 401.

DuBay Hearing—A post-trial hearing ordered by an appellate court or convening authority for the limited purpose of obtaining further evidence on a matter under consideration by the court. *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967)

Entry of Judgment—Document which reflects the results of the court-martial after all post-trial actions, rulings or orders. See R.C.M. 1111 and Article 60c, UCMJ.

Expurgated—A document that has been redacted of certain information.

Extrajudicial statement—Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication.

General Court-Martial Convening Authority—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

Local Responsible Official—The individual responsible for identifying victims and witnesses of crimes and providing the services required by VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO.

Mandatory Forfeitures—Forfeitures that apply under operation of law. See Article 58b, UCMJ.

Mandatory Minimum Sentence—A portion of a sentence (e.g., confinement, punitive discharge) which is prescribed by law as the lowest possible sentence that can be adjudged if an individual is found guilty of an offense. See FY 2014 NDAA § 1702(b)(4)(B).

Metrics—Standards of measurement by which certain requirements can be assessed.

Milestone—Time-based goals to assist in expediting the administration of justice.

Military Protective Order—Formal protective orders issued by commanders on DD Form 2873. Such orders are used to limit communications; prohibit a subject from being within a certain physical distance of a protected person or protected person's household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the protected person.

No-Contact Order—Order given by a military member to have no-contact with another person for a period of time.

Offense—Crime punishable under the UCMJ that is committed by a person subject to the UCMJ.

Original Court-Martial Convening Authority—Court-martial convening authority that convened the court-martial at issue.

Remand—Return a case to a lower court for reconsideration.

Special Court-Martial Convening Authority—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

Special Interest Report—AMJAMS reports submitted by base legal offices in certain cases that generate interest within Headquarters Air Force.

Special Victim Investigation and Prosecution Capability—Team of specially trained prosecutors, paralegals, and victim witness assistance personnel who work with specially trained investigators, often from investigative agencies such as OSI, to provide advice, guidance, and support during the investigative and military justice process.

Statement of Trial Results—Document which is prepared after the announcement of sentence or acquittal and is inserted into the Record of Trial. See R.C.M. 1101 for further information.

Straddling Cases—Refers to a single court-martial that alleges offenses occurring both before 1 January 2019 and on or after 1 January 2019.

Summarized Transcript—A transcript which involves a summary of the proceedings and is not verbatim. See DAFMAN 51-203 for additional information.

Unexpurgated—A document which has not been redacted.

Verbatim Transcript—A transcript of a proceeding which includes word-for-word reduction of audio to writing. See DAFMAN 51-203 for additional information.

Victim—The definition of victim varies throughout the military justice process. The definition governs what rights are afforded the victims, as defined. Practitioners must consult the MCM to

determine which definition of victim applies at each stage to determine which definition applies. See also DAFI 51-207.

Virtual Military Justice Deskbook—Knowledge management website with military justice resources available to Air Force judge advocates.

Victim and Witness Assistance Program Coordinator—The individual selected by the SJA to implement and manage VWAP.

Victim Liaison—An individual appointed by the LRO or delegate to assist a victim during the military justice process.

Waiver of Forfeitures—Act of a convening authority to direct forfeitures not be collected but that they be directed to the accused's dependents, for use of the accused's dependents, for no more than six months. See Article 58b, UCMJ.

Witness—A person who has information or evidence of a crime and provides that information or evidence to a DAF official.

**BY ORDER OF THE SECRETARY
OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-202**

4 JANUARY 2022

Law

NONJUDICIAL PUNISHMENT



COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Air Force Policy Directive (AFPD) 51-2, *Military Justice and Other Criminal Proceedings*. Specifically, this instruction addresses Article 15 of the Uniform Code of Military Justice (UCMJ), Part V of the Manual for Courts-Martial (MCM). This publication applies to the Regular Air Force, the Air Force Reserve, the Air National Guard (ANG) (when in federal service under Title 10 United States Code (U.S.C)), and the United States Space Force. Users of this instruction should familiarize themselves with the UCMJ, MCM, and Department of Defense directives and instructions pertaining to military justice. This publication may not be supplemented without the prior, written approval of AF/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by Department of Defense Instruction (DoDI) 5400.11, *DoD Privacy and Civil Liberties Programs*. The applicable SORN, F051 AFJA I, *Military Justice and Magistrate Court Records* is available at <http://dpclo.defense.gov/Privacy/SORNs.aspx>. Refer recommended changes and questions about this publication to the office of primary responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, Table 1.1 for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to AF/JAJM, the publication OPR. Commanders may not waive non-tiered compliance items in this instruction.

See DAFI 33-360, paragraph 1.9.3.1. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule (RDS), which is located in the Air Force Records Information Management System. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Department of the Air Force. Compliance with the attachment in this publication is not mandatory.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Major changes include incorporation of a standard of proof applicable at all stages of the nonjudicial punishment process. The revision also clarifies the Air Force Reserve uses of AF Forms 3070A, 3070B, and 3070C; clarifies the member must acknowledge the commander's decision on filing the nonjudicial punishment (NJP) in an Unfavorable Information File (UIF) prior to completion of the servicing staff judge advocate (SJA) legal review; and clarifies that Air Force Reserve and ANG commanders must be in Title 10 status to impose punishment. The revision also contains updated Department of the Air Force (DAF) references to reflect applicability to both Air Force and Space Force personnel and removes recommended templates from the instruction and places them in the Virtual Military Justice Deskbook found at <https://kmjas.jag.af.mil/moodle/course/view.php?id=251>

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Chapter 1

OVERVIEW AND ROLES AND RESPONSIBILITIES

1.1. Overview.

1.1.1. Purpose. NJP provides commanders with an essential and prompt means of maintaining good order and discipline. It is intended to promote positive behavior changes in service members without the stigma of a court-martial conviction. See MCM, Part V, paragraphs 1b, 1c, and 1e.

1.1.2. “Department of the Air Force” or “DAF” will be used when the Air Force and Space Force are referred to collectively.

1.1.3. This instruction implements requirements for the administration of NJP in the DAF. The primary source of direction and guidance on NJP is the MCM, Part V. It establishes requirements, rules, and procedures for imposing NJP on members.

1.2. Roles and Responsibilities.

1.2.1. Commanders shall:

1.2.1.1. Report NJP actions on all officers to the Secretary of the Air Force, Inspector General, Senior Official Inquiries Directorate (SAF/IGS) (for general officers) or local Inspector General (IG) (for all other officers) when initiated and when final action is complete, in accordance with AFI 90-301, *Inspector General Complaints Resolution*.

1.2.1.2. Coordinate with the Air Force Reserve commander prior to initiating NJP against an Air Force Reserve member assigned or attached to the commander’s unit. **(T-3)**.

1.2.1.3. Coordinate with the administrative control (ADCON) commander to whom the Air National Guard (ANG) member is assigned when in Title 10 status or the 201st Mission Support Squadron (MSS) commander prior to initiating NJP action against an ANG member assigned or attached to the commander’s unit, whichever is applicable. **(T-3)**. See [paragraph 2.11](#).

1.2.1.4. Consult with the servicing staff judge advocate (SJA) prior to initiating and administering NJP actions against members in the commander’s unit. **(T-3)**.

1.2.1.5. Ensure the impartial and timely administration of military justice by offering NJP for appropriate offenses as soon as possible after facts indicate such offenses have been committed and have become known by the member’s commander.

1.2.2. The General Court-Martial Convening Authority (GCMCA) shall supervise all NJP within the convening authority’s command.

1.2.3. The GCMCA SJA shall:

1.2.3.1. Conduct supervisory SJA review of all NJP within the command.

1.2.3.2. Forward the original NJP for filing in the master personnel record group.

1.2.4. The servicing SJA shall:

1.2.4.1. Advise commanders on all legal aspects of NJP, both substantive and procedural.

1.2.4.2. Conduct a legal sufficiency review on NJP after the conclusion of all appeal, UIF, and selection record decisions. See **paragraph 6.6**.

1.2.4.3. Advise commanders on their responsibilities regarding criminal indexing and Deoxyribonucleic Acid (DNA) collection related to NJP. See **Section 6D**.

1.2.4.4. Forward a copy of all final AF Forms (AF Form 3070A – 3070E, *Record of Nonjudicial Punishment Proceedings*; AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*; and AF Form 3212, *Record of Supplementary Action Under Article 15, UCMJ*), to the local Office of Special Investigations (OSI) detachment, local Security Forces Squadron Investigations Section (SFS/S2I), and OSI's Warfighting Integration Directorate (OSI/XI), in accordance with **Section 6D** of this instruction. This satisfies the legal office's requirements with regard to criminal titling and indexing in accordance with 18 U.S.C. § 922, *Unlawful acts*; Department of Defense Instruction (DoDI) 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*; and DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*; and AFMAN 71-102, *Air Force Criminal Indexing*. See **Section 6D**.

1.2.5. The Military Personnel Flight (MPF) shall take appropriate personnel actions required upon receipt of NJP records.

1.2.6. The Accounting and Finance Office (AFO) shall take appropriate finance actions upon receipt of NJP records.

1.2.7. OSI and Security Forces shall, upon receipt of completed AF Forms 3070, 366 and 3212, update criminal record history and disposition data in accordance with 18 U.S.C. § 922, DoDI 5505.11, DoDI 5505.14, and AFMAN 71-102. **(T-0)**.

1.3. Forms. Use the following forms to record NJP actions:

1.3.1. AF Form 3070, *Record of Nonjudicial Punishment Proceedings*. Although referenced generally as "AF Form 3070," this form is subdivided based on grade and status. Use of AF Forms 3070A, 3070B, and 3070C is based on the grade of the member at the time NJP is initiated. For example, if a member is an E-6 at initiation of NJP and is found to have committed one or more offenses as listed on the AF Form 3070B, the AF Form 3070B must be completed, to include the senior noncommissioned officer (SNCO) selection record decision, even if the member is reduced below the grade of E-6 as a result of the NJP. AF Forms 3070D and 3070E are specific to members of the ANG in the grade of E-6 through E-9 and officers, respectively. The Air Force Reserve utilizes AF Forms 3070A, 3070B, and 3070C for NJP proceedings but do not utilize the selection records process for NCOs.

1.3.1.1. AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB through SSgt)*. This form is also for use by the ANG for personnel in the ranks of AB through SSgt.

1.3.1.2. AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt through CMSgt)*.

1.3.1.3. AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officers)*.

1.3.1.4. AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (TSgt through CMSgt) – ANG Only*.

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1.3.1.5. AF Form 3070E, *Record of Nonjudicial Punishment Proceedings (Officers) – ANG Only*.

1.3.2. AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*.

1.3.3. AF Form 3212, *Record of Supplementary Action under Article 15, UCMJ*.

Chapter 2

AUTHORITIES, LIMITATIONS ON IMPOSITION OF NONJUDICIAL PUNISHMENT, AND JURISDICTION

Section 2A—Authority to Impose Nonjudicial Punishment

2.1. Commander's Authority to Impose NJP. The following personnel are authorized to impose NJP:

2.1.1. A commander of an Air Force unit.

2.1.2. A commander of a Space Force unit.

2.1.3. Commander, Air Force Forces, which is an officer designated from the United States Air Force who serves as the commander of all United States Air Force forces assigned and attached to the United States Air Force component in a joint or combined operation. See Air Force Doctrine Publication 3-30, *Command and Control*.

2.1.4. Commander, Space Force Forces, which is an officer designated from the United States Space Force who serves as the commander of all United States Space Force forces assigned and attached to the United States Space Force component in a joint or combined operation.

2.1.5. Commanders of detachments, headquarters, squadron sections and equivalents, and United States Air Force and United States Space Force element sections, if properly appointed to command. See MCM, Part V, paragraph 2; AFI 38-101, *Manpower and Organization*; and AFI 51-509, *Appointment to and Assumption of Command*.

2.1.6. The senior air force officer (SAFO) in the headquarters staff organization of a unified command, subordinate unified command, specified command, joint task force, combined command, or combined task force, with respect to Air Force members in the organization. The SAFO in the Air Force element of an activity outside the DAF, as defined in [Attachment 1](#), with respect to Air Force members in the activity. This applies even if the Air Force element has not been formally designated as a unit and the SAFO has not been formally appointed to command. See AFI 51-509.

2.1.6.1. The SAFO must be an officer otherwise eligible to command in accordance with AFI 51-509.

2.1.6.2. SAFOs may delegate their authority under Article 15, UCMJ, to the next senior DAF officer or another principal assistant who is generally equivalent to a vice commander.

2.1.7. The senior space force officer (SSFO) in the headquarters staff organization of a unified command, subordinate unified command, specified command, joint task force, combined command, or combined task force, with respect to Space Force members in the organization. The SSFO in the Space Force element of an activity outside the DAF, as defined in [Attachment 1](#), with respect to Space Force members in that activity. This applies even if the Space Force element has not been formally designated as a unit and the SSFO has not been formally appointed to command. See AFI 51-509.

2.1.7.1. The SSFO must be an officer otherwise eligible to command in accordance with AFI 51-509.

2.1.7.2. SSFOs may delegate their authority under Article 15, UCMJ, to the next senior DAF officer or another principal assistant who is generally equivalent to a vice commander.

2.1.8. The commander of an Air Force element, as appointed by superior competent authority in accordance with AFI 51-509. This includes the Air Force element of a headquarters unit in a joint or combined command or task force, as well as the Air Force element of an activity outside the DAF.

2.1.9. The commander of a Space Force element, as appointed by superior competent authority in accordance with AFI 51-509. This includes the Space Force element of a headquarters unit in a joint or combined command or task force, as well as the Space Force element of an activity outside the DAF.

2.1.10. The commander of Air Force District of Washington (AFDW/CC), and the commanders of subordinate units when designated by AFDW/CC, for Air Force members assigned to an Air Force element of an activity outside the DAF. This NJP authority is held concurrently with element commanders and SAFOs of activities outside the DAF.

2.1.11. The commander of Space Operations Command (SpOC/CC), and the commanders of subordinate units when designated by SpOC/CC, for Space Force members assigned to a Space Force element of an activity outside the DAF. This NJP authority is held concurrently with element commanders and SSFOs of activities outside the DAF.

2.1.12. The superintendent of the United States Air Force Academy (USAFA) and the commandant of a school that is designated as an Air Force unit.

2.1.13. The commander of a host command, and the commanders of subordinate units when designated by the host commander, providing support to a tenant organization pursuant to AFI 25-201, *Intra-Service, Intra-Agency, and Inter-Agency Support Agreements Procedures*.

2.1.14. Joint force commanders of joint activities established under the criteria of Joint Publication 1, *Doctrine for the Armed Forces of the United States*.

2.1.15. Multiservice U.S. Armed Forces commanders in combined commands, combined task forces, and activities outside the DAF, as defined in [Attachment 1](#), to whose command DAF members are assigned or attached.

2.2. NJP Authority in a Joint Force. The joint force commander has authority to impose NJP on DAF members assigned or attached to the command unless such authority is withheld by a superior joint commander. See Joint Publication 1. DAF members are “assigned or attached to the command” of a joint force commander if they are assigned or attached to the joint staff organization or to a unit which is assigned or attached to the joint force.

2.2.1. Joint force commanders should use this instruction when imposing NJP on DAF members. See Joint Publication 1. The appropriate DAF commander should normally handle matters that involve only the DAF and occur within the military jurisdiction of the DAF.

2.2.2. If NJP is imposed on a DAF member by a commander of a different service, the decisions as to collateral administrative actions (e.g., entry into UIF or selection record) will be made by the SAFO for Air Force members, SSFO for Space Force members, or commander of the applicable Air Force or Space Force element in the Joint Command. If neither is available nor senior to the commander who imposed NJP, the decision is made by a general court-martial convening authority (GCMCA) of the DAF host command who is senior to the commander who imposed punishment, or by a GCMCA senior to the commander who imposed punishment as designated by the respective DAF host command's major command (MAJCOM) or field command (FIELD COM) commander.

2.3. Procedures for Imposing NJP in a Joint Force. If the joint force commander decides to initiate NJP against a DAF member, the joint force commander should coordinate with the appropriate DAF commander before taking action.

2.3.1. The appropriate DAF commander immediately notifies the servicing SJA. See AFI 25-201. The servicing SJA:

2.3.1.1. Coordinates with the SJA assigned to the joint force commander.

2.3.1.2. Advises on the application of DAF instructions in the administration and processing of NJP actions, and assists the joint force SJA in ensuring the NJP action is properly completed by the joint force commander.

2.3.1.3. Enters the NJP proceedings into the Automated Military Justice Analysis and Management System (AMJAMS) and ensures required personnel and finance actions are taken. See paragraphs 4.8 and 6.5.2 to identify the DAF officer responsible for deciding selection record and UIF actions.

2.3.2. If a DAF judge advocate is assigned to the joint force commander, he or she may provide advice to the joint force SJA in lieu of the host command's servicing SJA. The servicing DAF SJA shall be notified of the occasion and nature of the advice and action and shall remain responsible for the required AMJAMS entries, personnel records and finance actions.

2.3.3. If the joint force commander determines NJP authority over a DAF member should be left to the discretion of DAF authorities, the appropriate DAF commander, as identified in [paragraph 2.1](#), may take action. NJP shall be processed through the servicing DAF SJA for the host command.

2.3.4. Commander and member must both be in Title 10 status for action to be taken (e.g., if member is ANG or Air Force Reserve, he or she must be in Title 10 status or must be recalled to Title 10 status before NJP may be initiated). (T-0). See paragraphs 2.11 and 2.12.

2.4. Procedures for Multiservice Commanders. The multiservice commander, when imposing NJP on a DAF member, follows this instruction, including the guidance applicable to joint force commanders in paragraphs 2.2 and 2.3.

2.5. Delegation of Authority. Commanders who are general officers or who exercise GCMCA may delegate their powers under Article 15, UCMJ, to a principal assistant, provided that principal assistant is a military officer. See AFPD 51-2. The principal assistant then assumes the commander's authority to impose NJP on members of the command who are subordinate to the principal assistant. The principal assistant does not assume the commander's rank for punishment purposes, but acts on virtue of the principal assistant's own rank and the commander's delegation of authority. Delegation of such authority must be in writing or incorporated in a permanent directive, and should be addressed to the principal assistant by duty title, rather than by name, except as described in paragraphs 2.1.6.3 and 2.1.7.3. The original written delegation or directive shall be filed in the office of the SJA servicing the commander concerned. A delegation made by duty title continues in effect when a new principal assistant occupies the position or when command changes to a new commander, unless or until expressly rescinded. A commander delegating NJP punishment authority also retains the authority to administer NJP in the commander's own right.

Section 2B—Limitations on Commander's Authority

2.6. Limitations on Commander's Authority. A commander may only impose NJP on members of his or her command.

2.6.1. "Members of his or her command" include those assigned to the element or organization commanded, or members on temporary duty (TDY) with, or otherwise attached to, the element or organization. A commander may exercise NJP authority on a member not on TDY orders if the commander exercises the usual responsibilities of command over the member. A TDY commander has concurrent authority with the commander of the member's element or organization of permanent assignment. In these cases, the commander should confer whenever possible with the member's parent organization commander about which commander should initiate action. If the member is in the Air Force Reserve, prior coordination with the member's parent organization commander is required. (T-3). See [paragraph 2.12](#). If the member is in the ANG, prior coordination with the member's assigned Title 10 ADCON commander is required. (T-3). See [paragraph 2.11](#). In order for a commander to initiate NJP on a member of the Air Force Reserve or ANG, the commander and member must both be in Title 10 status.

2.6.2. A commander will not impose NJP on a member after that member has been transferred from the command. If NJP was initiated but punishment was not imposed prior to the transfer, the initiating commander may forward the record of proceeding to the gaining commander for disposition. If a member transfers after punishment has been imposed but before the action is complete, the action (including adjudication of any appeal) will be completed by the imposing commander's chain of command. In the event either of these scenarios should occur, refer to [paragraph 3.9](#) to determine what notification, if any, should be provided to the member receiving NJP.

2.7. Commander as Victim or Witness in Commander's Personal Capacity.

2.7.1. Commander as Victim. If a commander is the victim of the crime for which the NJP is being contemplated in the commander's personal capacity (e.g., victim of assault or larceny) as opposed to official capacity (e.g., violation of commander's order), that commander should forward the report of the incident to the next higher commander for review and appropriate action.

2.7.2. Commander as Witness. A commander who has witnessed misconduct or events related to misconduct is not barred from imposing NJP for the witnessed misconduct. In these instances, a commander should document his or her observations in an MFR record and include it as part of the evidence. If the commander's involvement precludes fair and impartial judgment, that commander should forward the report of the incident to the next higher commander for review and appropriate action.

2.8. Withholding Authority. A commander may withhold from any subordinate commander all or part of the authority, including the authority to impose NJP for specific types of offenses, that the subordinate would otherwise have under the UCMJ, MCM, or this instruction. When authority is withheld, such action shall be in a clearly defined writing or permanent directive. File the original of the letter or directive in the office of the SJA servicing the commander withholding the authority. File a copy in the office of the SJA servicing the commander whose authority has been withheld. Any such withholding remains in effect when a new commander assumes either command, until and unless expressly revoked by the superior commander. Any such action should be addressed by duty title and not by name.

2.9. Cases Involving State or Foreign Prosecution Interest. Only the Secretary of the Air Force (SecAF) may approve initiation of NJP action against a member who is pending trial or has been previously tried by a federal, state, or foreign court for substantially the same act(s) or transaction(s), regardless of the outcome.

2.9.1. A member may be considered to be "pending trial" when state or foreign authorities have expressed an intent to try the member, even if formal charges have not yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

2.9.2. A member is deemed "tried" if jeopardy has attached. Follow the applicable state or foreign law to determine when this occurs. At a minimum, jeopardy attaches when the jury is impaneled and sworn, or when the first witness testifies in a judge-alone trial. See *Crist v. Bretz*, 437 U.S. 28 (1978).

2.9.3. A member is not deemed "tried" if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of conditions as an alternative to prosecution, without an initial determination of guilt. If deferral, abeyance, or diversion is conditional and the member remains subject to prosecution if a condition is violated, UCMJ action should not be taken until after the deferral, abeyance, or diversion is completed.

2.9.4. A member is not deemed "tried" in situations where jeopardy attached without resolution of the case, if further prosecutorial action is authorized under state or foreign law (for example, in the case of a mistrial).

2.9.5. If the state or foreign proceedings end without jeopardy attaching or if the DAF receives clear indication in writing from an authorized state or foreign government representative that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the DAF may proceed with nonjudicial punishment.

Section 2C—Jurisdiction

2.10. Host Command Jurisdiction. All members of a tenant unit, Air Force element, or Space Force element, whether designated a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of authority under Article 15, UCMJ. However, commanders of tenant units, and other Air Force or Space Force element officers authorized to impose NJP pursuant to this instruction, retain concurrent authority to take such action.

2.10.1. Any appeal is made to the next superior authority in the command channel of the officer who imposes punishment or to the appeal authority otherwise designated by AF/JAJM. See AFD 51-2.

2.10.2. Regardless of who imposes punishment or acts on the appeal, the action is administratively processed through the host command's SJA.

2.11. Jurisdiction over Air National Guard Members. Jurisdiction attaches when ANG members are in Title 10 status. However, because ANG Title 10 status cannot ordinarily be administratively extended for investigations into UCMJ violations or to complete actions to address UCMJ violations, the supporting Regular Air Force legal office contacts the legal office supporting the ANG Readiness Center, the Directorate Judge Advocate-ANG, within the National Guard Bureau Office of the General Counsel (NGB-GC), to discuss the timing of exercising jurisdiction and options for maintaining jurisdiction. The process for obtaining jurisdiction over ANG members varies based on the status of the member at the time the commander intends to initiate NJP.

2.11.1. Air National Guard Members in Title 10 Status. When an ANG member commits misconduct while in Title 10 status and attached to a Regular Air Force or Space Force unit, the commander of that unit initiates NJP if otherwise authorized to initiate NJP over that member. The commander coordinates any action with NGB-GC and 201 MSS. **(T-3).**

2.11.2. If an ANG member's Title 10 orders have expired and the ANG member has reverted to Title 32 ANG status before UCMJ action commences, the member must be recalled to Title 10 status under 10 U.S.C. § 802(d), *Persons subject to this chapter.* **(T-0).**

2.11.2.1. The servicing legal office of the attached commander with whom the ANG member was performing in Title 10 status at the time of the misconduct contacts NGB-GC, who coordinates with 201 MSS.

2.11.2.2. NGB-GC, in coordination with 201 MSS, identifies the Regular Air Force or Space Force installation with a servicing legal office that is geographically closest to the member's Title 32 home ANG unit.

2.11.2.3. If, after consulting NGB-GC and the servicing legal office, a decision to initiate NJP is made by the 201 MSS, the servicing legal office identified in [paragraph 2.11.2.2](#) routes a request to recall the member to Title 10 status to one of the following:

2.11.2.3.1. A GCMCA for the host command of the nearest Regular Air Force or Space Force installation;

2.11.2.3.2. A GCMCA for the Regular Air Force or Space Force unit to which the member was attached for duty (supported commander);

2.11.2.3.3. A GCMCA for the Regular Air Force or Space Force unit to which the member was attached for training; or

2.11.2.3.4. Any GCMCA pursuant to an agreement with or a request by 201 MSS/CC.

2.11.3. ANG Recall Process.

2.11.3.1. The GCMCA evaluates recall decisions using the preponderance of the evidence standard;

2.11.3.2. The GCMCA authorizes the recall to Title 10 status for UCMJ action against the member by signing a memorandum prepared by the GCMCA legal office;

2.11.3.3. The Air Force Director of Manpower, Organization and Resources (AF/A1M) provides the man-days for the orders under 10 U.S.C. § 802(d);

2.11.3.4. The member's home station creates the Title 10 order(s);

2.11.3.5. If necessary, the GCMCA who recalls the member to Title 10 status funds travel-related entitlements in accordance with the Joint Travel Regulations. *See Joint Federal Travel Regulations.*

2.11.3.6. The member is ordered to Title 10 status and scheduled to appear at the home ANG unit for NJP processing and remains in Title 10 status until the conclusion of that process.

2.11.3.7. Requirement that Commander be in Title 10 Status. The commander initiating the NJP must be in Title 10 status throughout the NJP process to include initiating NJP, making a decision regarding guilt and punishment, making an appeal or selection record decision, and forwarding the NJP for appellate or reviewing authority determination. The commander must be in Title 10 status when the member receiving NJP makes a personal presentation. See [paragraph 3.12](#).

2.11.3.8. Execution of Punishment. Members must be in Title 10 status in order for punishment to be executed. In the event an ANG member's Title 10 orders have expired and the member has reverted to Title 32 status before execution of punishment, the punishment does not take effect until the member is returned to Title 10 status.

2.12. Jurisdiction over Air Force Reserve Members. Jurisdiction attaches when Air Force Reserve members are in Title 10 status.

2.12.1. When an Air Force Reserve member commits misconduct while in Title 10 status and attached to a Regular Air Force or Space Force unit, the commander of that unit initiates NJP if otherwise authorized to initiate NJP over that member. The commander coordinates any action with the member's Air Force Reserve chain of command including the applicable SJA. **(T-3).**

2.12.2. If an Air Force Reserve member's Title 10 status terminates before UCMJ action commences, the member must be recalled to Title 10 status under 10 U.S.C. § 802(d) or the commander initiating the NJP must wait until the member is otherwise in Title 10 status. **(T-0).**

2.12.3. Subject to the coordination requirement of [paragraph 2.12.1](#), the following individuals may recall an Air Force Reserve member to Title 10 status for purposes of administering NJP:

2.12.3.1. A GCMCA for the Regular Air Force or Space Force unit to which the member is attached for training purposes;

2.12.3.2. A GCMCA for the Regular Air Force or Space Force unit in which the member performed federal service and/or was in Title 10 status when the offense occurred;

2.12.3.3. A GCMCA for the Regular Air Force or Space Force host unit, as designated in the applicable host-tenant support agreement, if the member is assigned to an Air Force Reserve unit for training purposes or was attached to such a unit when the offense occurred;

2.12.3.4. AFRC/CC, 4 AF/CC, 10 AF/CC, or 22 AF/CC for members assigned or attached to their respective commands; or

2.12.3.5. A GCMCA for the Regular Air Force or Space Force host command.

2.13. Requirement that Commander be in Title 10 Status. The commander initiating the Article 15 must be in Title 10 status throughout the NJP process to include initiating NJP, making a decision regarding guilt and punishment, making an appeal or selection record decision, and forwarding the NJP for appellate or reviewing authority determination. The commander must be in Title 10 status when the member receiving NJP makes a personal presentation. See [paragraph 3.12](#).

2.14. Jurisdiction Over Certain Air Force Personnel.

2.14.1. USAFA Cadets. See DAFI 51-201, Section 2B.

2.14.2. Air Force Judge Advocates Assigned to Headquarters Air Force (AF/JA) and Subordinate Directorates. See DAFI 51-201.

2.14.3. Military Judges. See DAFI 51-201.

2.15. Exceptions to Support Agreements. When a support agreement differing from the construct outlined in this instruction is necessary or desirable, the contents and conditions of the support agreement must be documented at the GCMCA level or higher and coordinated with AF/JAJM.

Chapter 3

PROCEDURES FOR INITIATING AND IMPOSING NONJUDICIAL PUNISHMENT

Section 3A—Responsibilities of the Initiating Commander

3.1. General Responsibilities. A commander who initiates NJP action and imposes punishment acts on the basis of information the commander determines relevant. The commander's action must be temperate, just, and conducive to good order and discipline.

3.2. Notice of Recoupment of Benefits. Concurrent with initiation of the NJP action, the initiating commander must provide written notice to a member who has received educational assistance, special pay, or bonuses concerning the member's obligation to reimburse the DAF if the member is discharged or involuntarily separated for misconduct. **(T-0).** The statement of understanding regarding recoupment is inserted and included on the AF Form 3070. The member's initial signature on the AF Form 3070 constitutes acknowledgement. Noncompliance with this provision shall not affect the legal sufficiency of the NJP action.

3.3. Timeliness of Actions. The impartial and timely administration of military justice helps maintain good order and discipline. NJP should be offered for appropriate offenses as soon as possible after facts that indicate such offenses have been committed become known by the member's commander.

3.3.1. Timelines. Commanders should offer NJP within 21 calendar days of the date of discovery of the offense. Punishment should be served on the member within nine calendar days of offer of NJP. The servicing SJA legal review should be completed within nine calendar days of the service of punishment.

3.3.2. SJAs, chiefs of military justice and non-commissioned officers in charge (NCOICs) of military justice should regularly analyze AMJAMS data as to each segment of NJP processing to determine specific areas for improvement, and implement appropriate management measures to maximize effectiveness and efficiency. The following metrics have been established to assist in expediting the administration of justice:

3.3.2.1. Complete 80% of all NJP actions (date of discovery of the offense through servicing SJA legal review) within 39 days.

3.3.2.2. The date of discovery of the offense is defined as the initial date when a DAF investigative agency (e.g., OSI, SFS/S2I, IG), legal office, commander, supervisor, or first sergeant, whichever is first in time, becomes aware of an allegation that an offense has been committed and a potential subject of NJP has been identified, including when notification is made by civilian authorities.

3.3.2.2.1. For commander directed investigations (CDIs), the date of discovery of an offense is when a commander is notified of an allegation that an offense has been committed and a subject has been identified. The date of discovery is not the date the CDI is initiated or the date the allegation(s) are subsequently turned over to an investigative agency for further investigation.

3.3.2.2. Use the earliest date of discovery of all offenses (e.g., if the date of discovery of Offense A is 1 February and the date of discovery of Offense B is 15 February, the date of discovery for purposes of AMJAMS and the NJP metric is 1 February).

3.3.3. Failure to meet these processing goals does not preclude a commander from initiating NJP proceedings.

3.4. Standard of Proof. The burden of proof to be utilized for imposition of nonjudicial punishment, to include adjudication of any appeal, shall be a preponderance of the evidence.

3.5. Providing Evidence to the Member.

3.5.1. After a commander serves the AF Form 3070 on a member, that member and the member's counsel have a right to examine the evidence, except as noted in paragraphs **3.5.2** and **3.5.3**. The evidence includes that which the commander intends to rely upon in determining whether the member committed the alleged offense(s), and if applicable, regarding whether to impose punishment, and the quantum, if any, of punishment to be imposed. This includes any summary of a statement provided by the victim or witness. **Note:** The servicing legal office must ensure the victim is aware that a summary of comments made to the commander imposing NJP will be provided to the member. **(T-0).**

3.5.2. Members are not entitled to matters that are privileged, classified, or otherwise restricted by law, regulation, or instruction, even if relied upon by the commander.

3.5.3. Legal offices must redact personally identifiable information (PII) of individuals other than the member in the evidence prior to releasing matters to the member or defense counsel if determined not to be relevant for due process purposes. **(T-0).** When releasing Privacy Act material to defense counsel or members receiving NJP, government counsel must redact Privacy Act information regarding individuals other than the member. **(T-0).** An example would be Social Security numbers of individuals providing urinalysis samples, which appear in an otherwise relevant document but which have no relevance to the case. When Privacy Act material or PII is not redacted in material provided to the member or defense counsel, the member or defense counsel, as applicable, should take appropriate steps to guard against improper release of this information.

Section 3B—Initiating Nonjudicial Punishment

3.6. Initial Considerations.

3.6.1. After making a preliminary inquiry, the commander consults with the servicing SJA to determine whether NJP is appropriate and, if so, whether the commander can initiate proceedings personally, or should or must refer the matter to a superior commander for action. Such referral is appropriate when the commander cannot impose an appropriate punishment because of the member's grade, or where authority has been withheld. See **Table 3.1**, **Table 3.2**, and **paragraph 2.8**.

3.6.2. When initiation of NJP action is under consideration, the member's personal data is normally available to the legal office through AMJAMS. The member's personal data is also available by requesting an AMJAMS report on individual personnel (RIP) from the member's servicing MPF. Do not delay initiation for receipt of an AMJAMS RIP.

3.7. Description of Offense. The SJA should advise the commander how to properly allege each offense to state a violation of the UCMJ, consistent with available facts and evidence. Follow the form of specifications in MCM, Part IV. The legal office shall provide the language describing each offense on the AF Form 3070, except where impracticable. **(T-3).** The NJP action remains valid even if the specification fails to include all the elements of an offense, provided that the member is reasonably informed of the nature of the alleged misconduct.

3.8. Notifying the Member.

3.8.1. A commander initiating an NJP proceeding completes the offer portion of the AF Form 3070, signs and dates the form, and causes the member to be notified and advised of his or her rights using the AF Form 3070. See MCM, Part V. The initiating commander should serve the offer of NJP when practicable. If service by the initiating commander is not practicable, a subordinate of the initiating commander senior in rank to the member receiving NJP may be designated to serve the offer of NJP. The commander or subordinate annotates the date and time of service and signs in the appropriate location on the AF Form 3070 as the person serving the member. Regardless of who serves the member, provide the member with a copy of all pages of the AF Form 3070, any attachments, and the evidence discussed in [paragraph 3.5](#).

3.8.2. If a commander refers the matter to a superior commander, the superior commander should normally initiate the NJP action and provide the notification. Where it is not practicable for the member to appear personally before the superior commander, the subordinate commander may initiate the NJP proceeding by initialing the appropriate block in the offer portion of the AF Form 3070. When doing so, the subordinate commander notifies the member that NJP proceedings before a superior commander are being recommended (including the identity of the superior commander) and advises the member of his or her rights.

3.8.3. A commander who initially recommended NJP proceedings referred to a superior commander may dispose of the case personally if the AF Form 3070 has not been forwarded to the superior commander. If the commander does not intend to personally pursue the matter as an NJP action, the commander withdraws the AF Form 3070 by marking the appropriate box on the AF Form 3070 and providing it to the servicing SJA so termination of NJP proceedings can be recorded in AMJAMS. If the commander intends to personally pursue the matter as an NJP action, the commander has two options. The commander may notify the member by memorandum that he or she intends to decide whether to impose punishment under the pending NJP action instead of the superior commander, giving the member a new opportunity (three duty days) to accept NJP proceedings or demand trial by court-martial. Attach the memorandum to the AF Form 3070. Alternatively, the commander may withdraw the existing action and initiate a new action on a new AF Form 3070.

3.9. Changing Commanders before Nonjudicial Punishment Proceedings are Complete. A member must always be informed of the identity of the commander who will make the findings and punishment decisions before a decision is required as to whether to accept or demand court-martial. **(T-0).**

3.9.1. If a new commander takes responsibility for the case after the member was offered NJP proceedings, but before findings are made and punishment, if any, has been imposed, inform the member of the identity of the new commander and provide three duty days to accept NJP proceedings or to demand trial by court-martial. **(T-0)**. The new commander accomplishes this by either notifying the member about the change in writing, using the notification format located in the Virtual Military Justice Deskbook, or by withdrawing the old AF Form 3070 and initiating a new action on a new AF Form 3070. If a new action is being initiated, the original case in AMJAMS should be closed and a new case opened for the new offer. If the notification format is used, it becomes an attachment to the AF Form 3070.

3.9.2. If a change in commanders occurs after imposition of punishment but before the appeal decision has been made, inform the member in writing of the identity of the new commander and obtain an acknowledgment of this change from the member. Attach the notification and acknowledgment to the original AF Form 3070. Such a change neither impacts the former commander's action nor affords the member additional rights or response time. The new commander has full authority to ensure completion of the action, to include acting on appeal of punishment the new commander could not have independently imposed (e.g., the new commander is junior in grade to the imposing commander and could not have imposed the punishment the initiating commander imposed on the member). However, if an appeal is made, the former commander must prepare a written summary of any oral presentation and the source and substance of any other information considered, consistent with [paragraph 4.6.3](#). **(T-0)**. Notification of a change in commanders merely for the UIF decision ([paragraph 6.5.2](#)) is not required.

3.9.3. If a commander notifies a member of the intent to recommend that a superior commander impose NJP, a change of the superior commander provides the identical rights, creating a new opportunity to accept or reject NJP. The subordinate commander follows the procedures set forth above in such situations.

3.10. Discovery of Additional Offenses. When evidence of any additional offense arises following initiation of NJP proceedings, but before the member is notified of the punishment, a commander may:

3.10.1. Proceed with the initial NJP proceeding and, provided initiation of NJP is the appropriate disposition for the additional offense(s), offer a second NJP for the additional offense(s); or

3.10.2. Withdraw the initial AF Form 3070 and reinitiate NJP to include all offenses. If the form has been sent to a superior commander, withdrawal can only occur with the superior's agreement. If a new action is being initiated, the original case in AMJAMS should be closed and a new case opened for the new offer.

3.11. Member's Decision to Accept or Reject Nonjudicial Punishment.

3.11.1. Acceptance of NJP is a choice of forum, not an admission of guilt. The member has three duty days to accept or reject NJP following offer of NJP. Weekends and holidays are counted if they are normally scheduled duty days for the member. The member is not required to, but may, accept or reject NJP earlier than 72 hours following offer of NJP in which case the commander or designee shall include an MFR stating that the member voluntarily submitted his or her elections earlier than the required response deadline.

3.11.2. The member may request an extension by submitting a written request. Upon receiving the written request, the initiating commander may grant an extension for good cause. Initiating commanders should consult with the servicing legal office before granting any extension. **Note:** For traditional reservists or ANG members in Title 10 status, three duty days includes unit training assemblies (UTAs), annual tour days, or other days in which the member is in a military status. Duty days do not include any days in which the member is not in a military status, whether paid or unpaid.

3.11.3. Members must reflect their NJP decision by initialing the appropriate blocks in the member's acknowledgement and elections portion of the AF Form 3070, signing, and then annotating the date and time signed. **(T-0).** Member must initial the appropriate block indicating whether the member:

3.11.3.1. Consulted a lawyer. **(T-0).**

3.11.3.2. Demands trial by court-martial or waives the right to court-martial and accepts NJP proceedings. **(T-0).**

3.11.3.3. Provided a written presentation. **(T-0).**

3.11.3.4. Requests a personal appearance before the commander and whether or not the member requests the personal appearance be public. **(T-0).**

3.11.4. The member has a right to consult a lawyer before making any decisions, and a lawyer may assist the member throughout the proceedings. The contact information of the closest military defense counsel should be provided to the member to further explain the member's rights. The member may retain civilian counsel at the member's own expense. The commander should encourage the member to take full advantage of this time to consult with legal counsel, to decide whether to accept NJP proceedings, and if so, to prepare matters in defense, extenuation, and/or mitigation. The right to legal counsel does not include the right to request individual military defense counsel as defined in DAFI 51-201. However, where a member asserts an attorney-client relationship with a military defense counsel other than the detailed military defense counsel, in regard to the same matter for which he or she is being offered NJP, process the request for this counsel according to the provisions of DAFI 51-201.

3.11.5. If a member does not reply with his or her elections in time, the commander may continue with the proceedings by noting "member failed to respond" in the member's acknowledgement and elections portion of the AF Form 3070 then initialing and dating. The member's failure to respond in time is deemed an acceptance of NJP. However, if the commander has reason to believe a failure to respond resulted from reasons beyond the member's control, the commander may not, without good cause, proceed with NJP action.

3.12. Member's Presentation. A member is generally entitled to appear personally before the imposing commander and present matters in defense, extenuation, and/or mitigation, except under extraordinary circumstances or when the imposing commander is unavailable to receive the member's appearance in person or via alternative means (e.g., telephone, video teleconferencing). There is no requirement a lawyer be made available to accompany the member at a personal appearance. See MCM, Part V, paragraph 4c(1) for the member's entitlements at a personal appearance.

3.12.1. If a personal appearance before a superior commander in proceedings initiated under **paragraph 3.8.2** is prevented by the unavailability of the superior commander or by extraordinary circumstances, the member may appear personally before the subordinate commander who served him or her with the AF Form 3070. The subordinate commander then prepares a memorandum summarizing the presentation and forwards it to the superior commander, along with all written matters submitted by the member.

3.12.2. Under any other circumstances where a personal appearance is prevented by the unavailability of the imposing commander or by other extraordinary circumstances, the member appears personally before a person designated by the imposing commander. The designee prepares a memorandum summarizing the presentation and forwards it to the imposing commander, along with all written matters submitted by the member.

3.12.3. The commander may open the personal appearance to the public, even though the member does not request it or consent to the appearance being open, subject to the following restrictions. Public NJP at commander's calls, UTAs, and other public gatherings is inappropriate without the consent of the member. The member must be given an opportunity to consult with counsel before deciding whether or not to consent to any such public appearance. **(T-0)**. NJP proceedings may be attended by a limited number of people in a more private setting (e.g., the commander's office). The individuals in attendance at NJP proceedings should normally be limited to those in the member's supervisory chain or people who can assist the decision authority (first sergeant, squadron section commander, SJA or designee, etc.).

3.12.4. If the proceedings involve a waiver of the statute of limitations, the member must sign a written waiver that becomes an attachment to the AF Form 3070. **(T-0)**. See MCM, Part V, paragraph 1f(4); Rule for Courts-Martial (R.C.M.) 907(b)(2)(B); and *United States v. Moore*, 32 M.J. 170 (CMA 1991).

Section 3C—Imposing and Administering Punishments

3.13. Commander's Findings.

3.13.1. Following full and fair consideration of the evidence, including any matters presented by the member, using a preponderance of the evidence standard of proof, the commander indicates one of the following actions in the commander's decision of the AF Form 3070 by initialing the appropriate block on the form:

3.13.1.1. The proceedings are terminated because NJP is not appropriate or because the member did not commit the offense(s) alleged.

3.13.1.2. The member committed one or more offenses alleged. The commander lines out, initials and dates any offense(s) for which NJP is not appropriate or that the member did not commit. If the member committed one or more lesser included offenses, the commander consults with the SJA before changing an alleged offense to a lesser included offense.

3.13.2. If the commander terminates the proceedings, the commander should notify the individual of this decision, and send the original AF Form 3070 to the servicing SJA for appropriate AMJAMS entries. The AF Form 3070 is then destroyed.

3.14. Commander's Punishments. The commander must consult the servicing legal office before the commander imposes punishment. **(T-3).**

3.14.1. The commander must consult directly with the servicing SJA or an attorney from the SJA's staff in lieu of the SJA. However, before providing a punishment recommendation on behalf of the SJA, the attorney from the SJA's staff must consult with the servicing SJA. This consultation must be annotated in AMJAMS. Any failure to consult with the servicing SJA, along with the reasons for such failure, requires annotation in AMJAMS. A non-attorney shall not provide punishment advice on behalf of the SJA. **(T-0).**

3.14.2. After the commander satisfies the requirements in [paragraph 3.14.1](#), the commander completes the commander's decision portion, and signs and dates the form in the indicated blocks. Punishment is recorded in the appropriate block as a continuation of the commander's decision. Examples of punishment formats are located in the Virtual Military Justice Deskbook. The date of imposition of NJP is the date the form is signed by the commander in the signature block of the commander's decision. The member should be informed of the punishment and acknowledge receipt of the action on the same date punishment is imposed. See [paragraph 4.5.2](#).

3.15. Maximizing the Impact of Punishment. Whenever possible, the commander should impose NJP personally.

3.16. Permissible Punishments. [Table 3.1](#) and [Table 3.2](#) set out the maximum permissible punishments, based on the grade and status of the commander and the grade of the member. If, after considering matters presented by the member, the commander determines the member committed one or more of the alleged offenses and NJP is appropriate, the commander must select at least one of the permissible punishments set out in [Table 3.1](#) or [Table 3.2](#). **(T-0).** The commander may suspend all or a portion of the punishment when imposed. For additional guidance on suspension of punishment, see [paragraph 5.4](#). However, if the commander determines the member should not receive any form of authorized punishment, then the commander must find that NJP is not appropriate and terminate the proceedings. **(T-0).**

3.16.1. The maximum authorized punishment in a single case is subject to the limitations in MCM, Part V, paragraph 5d.

3.16.2. No more than one-half of the member's pay per month is subject to forfeiture, regardless of the number of NJPs imposed. If the member is reduced in grade, the maximum forfeitures are calculated based upon the reduced grade, even if the reduction in grade is suspended.

3.16.3. Subject to the restrictions outlined in this paragraph, extra duties imposed as part of NJP may be required to be performed at any time and for any length of time during the period of punishment. No extra duties may be imposed that constitute: cruel or unusual punishment; punishment not sanctioned by the customs of the Air Force or Space Force (e.g., using the member as a personal servant); duties normally intended as an honor (e.g., assignment to honor guard); actions required to be performed in an unnecessarily degrading manner (e.g., an order to clean a floor with a toothbrush); or duties that are a safety or health hazard to the member.

3.16.4. Frocked commanders may exercise only that authority associated with their actual pay grade. **(T-0).** No increased punishment authority is conferred by assumption of the title and insignia of the frocked grade.

3.16.5. Officers in the grade of lieutenant colonel and below may not impose NJP on an officer.

3.17. Punishment Effective Date. Unsuspended reductions in grade and forfeitures of pay take effect on the date the commander imposes punishment. This is reflected as the date the commander signs block 4 of the AF Form 3070. All other unsuspended punishments take effect immediately upon notification to the member, unless the commander provides otherwise in the punishment indorsement. The suspension of a punishment takes effect on the date the commander imposes punishment, not the date the member was notified of the punishment. The date of notification to the member is reflected in block 5 of the AF Form 3070.

3.17.1. Prompt execution of punishment is desired absent unique circumstances, which include, but are not limited to, the member serving similar punishment from a prior UCMJ action, lack of available space in a correctional custody facility, physical incapacity of the member, emergency leave, and/or humanitarian considerations.

3.17.2. Once commenced, punishments involving restraint (e.g., correctional custody, restrictions, or arrest in quarters) or extra duties run continuously. However, these punishments may be stayed pursuant to the member's request based upon an appeal not being acted upon in accordance with MCM, Part V, paragraph 7.d, or when temporarily interrupted due to either the fault of the member or unique circumstance as listed above in [paragraph 3.17.1](#). Note that special rules for imposing punishment on reserve component members may be authorized under MCM, Part V, paragraphs 5.e and 5.f.

3.18. Release of Information. Release of NJP information to the public subsequent to imposition of punishment should be limited to an individual's grade, offense, punishment and squadron. Do not release information from the AF Form 3070 that would readily identify the member. **(T-0).**

Section 3D—Action When the Member Demands Trial by Court-Martial

3.19. Restrictions. If a member demands trial by court-martial, the commander may not impose NJP for the offense(s) listed on the offer of NJP.

3.20. Commander's Options. The commander is not required to prefer court-martial charges, and no mandate exists to refer a case to trial by court-martial. Charges and specifications preferred following rejection of an offered NJP action are not limited to those originally included in the offer. The form and substance of the charges may be altered to meet legal or proof requirements, and new charges may be added.

3.21. Withdrawing Demand for Trial. Once a member demands trial, the member may withdraw this demand only with the commander's approval. In addition, convening authority concurrence is required if charges have been preferred. If charges were preferred and not forwarded to the GCMCA (e.g., the withdrawal request was received prior to the completion of any Article 32, UCMJ, preliminary hearing and forwarding of the report to the GCMCA; if the charges were preferred with the intent of referring the charges to a special court-martial; or if the charges were preferred and referred to a special court-martial), the special court-martial convening authority's concurrence is sufficient. Otherwise, the request must be forwarded to the GCMCA for concurrence. Procedurally, the member must submit a written request to the commander, who

will then indorse approval or disapproval. (T-0). The request will become an attachment to the AF Form 3070. If withdrawal is granted, pen and ink changes should be made in the member's acknowledgement and elections portion of the AF Form 3070 to reflect the member's new decision to accept NJP proceedings and the commander should continue with the NJP proceedings. While this is the preferred resolution, initiating a new NJP proceeding remains an alternative.

Table 3.1. Enlisted Punishments.

Punishment	Imposed by O-1 through O-3	Imposed by O-4	Imposed by O-5 or Above
Additional Restrictions	May not Impose NJP on E-8 or E-9	May not Impose NJP on E-8 or E-9	See Note 2 for reduction of E-8 or E-9
Correctional Custody	Up to 7 days	30 days	30 days
Reduction in Rank	E-9 – No E-8 – No E-7 – No E-6 – No E-5 – One Grade E-4 – One Grade E-3 – One Grade E-2 – to E-1	E-9 – No E-8 – No E-7 – No E-6 – One Grade E-5 – One Grade E-4 – to E-1 E-3 – to E-1 E-2 – to E-1	E-9 – See Note 2 E-8 – See Note 2 E-7 – One Grade E-6 – One Grade E-5 – One Grade E-4 – to E-1 E-3 – to E-1 E-2 – to E-1
Forfeiture	7 days' pay	1/2 of 1 month's pay per month for 2 months	1/2 of 1 month's pay per month for 2 months
Reprimand	Yes	Yes	Yes
Restriction	14 days	60 days	60 days
Extra Duties	14 days	45 days	45 days

NOTES:

1. See MCM, Part V, paragraph 5b and 5d, for further limitations on combinations of punishments.
2. E-9 or E-8 may be reduced one grade only by MAJCOM/FIELDCOM commanders, commanders of unified or specified commands, or commanders to whom promotion authority to these grades has been delegated. See AFI 36-2502, *Enlisted Airmen Promotion and Demotion Programs*.
3. Frocked commanders may exercise only that authority associated with their actual pay grade.
4. For enlisted members of the ANG, the "initiating commander" recalling the member to Title 10 status may impose punishment. The "initiating commander" may be: (1) the commander to whom the member is attached in Title 10 status, (2) the 201 MSS/CC or subordinate or superior commander, or (3) the MAJCOM/FIELDCOM commander recalling the member to Title 10 status (or subordinate commander to the MAJCOM/FIELDCOM commander recalling the member to Title 10 status).

Table 3.2. Officer Punishments.

Punishment	Imposed by Colonel	Imposed by General Officer or GCMCA
Correctional Custody	No	No
Reduction	No	No
Forfeiture	No	1/2 of 1 month's pay per month for 2 months
Reprimand	Yes	Yes
Arrest in Quarters	No	30 days
Restriction	30 days	60 days
Extra Duties	No	No

NOTES:

1. Only MAJCOM/FIELDCOM commanders, commanders of unified commands, and their equivalents, or higher may impose NJP on general officers.
2. See MCM, Part V, paragraph 5b and 5d, for further limitations on combinations of punishments.
3. Only the ANG Readiness Center Commander, commander to whom the member is attached in Title 10 status, or MAJCOM/FIELDCOM commander (or subordinate commander to the MAJCOM/FIELDCOM commander) recalling the member to Title 10 status may impose punishment.

Chapter 4

NONJUDICIAL PUNISHMENT APPEALS AND SELECTION RECORDS

4.1. General Guidance. An appeal may be taken if a member considers the punishment to be unjust or disproportionate to the offense or because the member asserts the offense was not committed.

4.2. Appellate Authority. NJP appeals are made to the “next superior authority,” as defined in AFPD 51-2.

4.2.1. When a principal assistant to a commander of an Air Force or Space Force establishment, unit, or non-unit (other than Air Force or Space Force elements of organizations outside the DAF) imposed punishment, the “next superior authority” is the next DAF commander superior to the commander who delegated the power. See AFPD 51-2.

4.2.2. When a detachment commander imposes punishment, the “next superior authority” is the detachment commander’s immediate commander, unless the immediate commander is not the appointing authority (e.g., if the detachment commander is appointed by a group commander, the appellate authority cannot be a squadron commander of the squadron). Detachment commanders exercise the authority of the commander who appoints them as detachment commanders. See AFI 51-509.

4.2.3. When a section commander of a squadron imposes punishment, the “next superior authority” is the squadron commander’s superior commander. However, when a section commander for all other units or elements imposes punishment (e.g., group, wing, delta, garrison, numbered air force, major command, field command, center, field operating agency, and direct reporting unit), the “next superior authority” is the section commander’s immediate commander.

4.2.4. When the SAFO/SSFO or Air Force element commander for the headquarters staff organization in a unified command, specified command, subordinate unified command, joint task force, combined command or combined task force imposes punishment, the “next superior authority” is the SAFO/SSFO or Air Force/Space Force element commander in the headquarters staff organization at the next superior level component command in the joint or combined force, if any, or the GCMCA for the Air Force or Space Force unit responsible for providing support to the headquarters staff organization under AFI 25-201.

4.2.5. The DAF officer who acts on the appeal must at least be a field grade officer and higher in grade to the officer who imposed the punishment. **(T-0).** When the next superior authority is not at least a field grade officer and higher in grade to the SAFO/SSFO or Air Force/Space Force element commander who imposed the punishment, or when the SAFO/SSFO or Air Force/Space Force element commander for the headquarters staff of a unified command imposed the punishment, the Chief of Staff of the Air Force (CSAF) or Chief of Space Operations (CSO), as applicable, is the “next superior authority,” and the appeal is forwarded directly to AF/JAJM. CSAF may delegate this responsibility to the Vice Chief of Staff of the Air Force (AF/CV) and the CSO may delegate this responsibility to the Vice Chief of Space Operations (VCSO).

4.2.6. When the SAFO or Air Force element commander of an activity outside the DAF imposes punishment, the “next superior authority” is AFDW/CC. However, if AFDW/CC is not senior in grade to the SAFO or element commander who imposed punishment, CSAF, or AF/CV if CSAF delegated the authority, is the “next superior authority” and the appeal is forwarded directly to Investigations, Inquiries, and Relief Division (AF/JAJI) with a courtesy copy to AF/JAJM.

4.2.7. When the SSFO or Space Force element commander of an activity outside the DAF imposes punishment, the “next superior authority” is SpOC/CC. However, if SpOC/CC is not higher in grade to the SSFO or element commander who imposed punishment, the CSO, or the VCSO if CSO delegated the authority, is the “next superior authority” and the appeal is forwarded directly to AF/JAJI with a courtesy copy to AF/JAJM.

4.2.8. When the commander of an Air Force MAJCOM, direct reporting unit, or field operating agency imposes punishment, SecAF has designated CSAF as the appellate authority and authorized CSAF to delegate this authority to AF/CV. Forward such appeals directly to AF/JAJI with a courtesy copy to AF/JAJM.

4.2.9. When the commander of a Space Force FIELDCOM, direct reporting unit, or field operating agency imposes punishment, SecAF has designated CSO as the appellate authority and authorized CSO to delegate this authority to VCSO. Forward such appeals directly to AF/JAJI with a courtesy copy to AF/JAJM.

4.2.10. When a joint force commander, including a DAF officer acting in his or her capacity as a joint force commander, imposes punishment, the “next superior authority” is the next superior joint force commander. When the commander of a unified command imposes punishment, or is otherwise disqualified from being the appellate authority, forward the appeal to the Chairman of the Joint Chiefs of Staff for appropriate action by the Secretary of Defense or designee, in accordance with Joint Publication 1. The SAFO, SSFO, or commander of the member’s element notifies the servicing SJA of the appeal. The servicing SJA coordinates with the SJA or legal counsel who services the appellate authority to explain DAF policy and procedures for NJP and to advise the appellate authority’s SJA or legal counsel that collateral decisions and processing (including AMJAMS inputs, personnel and finance actions, and UIF and selection record entries) will be made within DAF channels.

4.2.11. When a multiservice commander in a combined command, combined task force, or activity outside the DAF imposes NJP on a DAF member, the next superior authority is the immediate multiservice commander who is a member of the U.S. Armed Forces and who is superior to the imposing commander, if any, or the DAF GCMCA with UCMJ authority over the Air Force member. However, if the next superior authority or GCMCA is junior in grade to the imposing commander, the AF/CV or VCSO, as applicable, is the “next superior authority” and the appeal is forwarded directly to AF/JAJM.

4.2.12. When a unique command structure or situation exists, AF/JAJM may designate another individual to act as the appellate authority. Applications for such designations shall be submitted to AF/JAJI with a courtesy copy to AF/JAJM in writing through appropriate command channels.

4.3. Format. Appeals must be documented on the AF Form 3070. **(T-0).** No right or entitlement to a personal appearance before the appellate authority is provided.

4.4. Delegation of Authority. If the “next superior authority” is a general officer or a GCMCA, that individual may delegate the power to act on appeals to a principal assistant in the manner described in [paragraph 2.5](#).

4.5. Procedures for Appeals.

4.5.1. Punishment is not stayed pending appeal, except as provided in MCM, Part V, paragraph 7d.

4.5.2. At the time a commander informs the member of the punishment, the commander:

4.5.2.1. Directs the member to acknowledge receipt of the punishment and right to appeal by signing the member's acknowledgement portion of the AF Form 3070 and then annotating the date and time signed. If the member refuses to acknowledge receipt of the punishment and rights to appeal, the commander notes “member refused to acknowledge receipt of punishment and right to appeal,” initials, and dates in the member's acknowledgement portion of the AF Form 3070. The time limit for appeal is still applicable despite the member's failure to sign the AF Form 3070.

4.5.2.2. Informs the member that the appeal can be filed anytime within five calendar days. **(T-0).** A decision not to appeal is final.

4.5.2.3. Explains that if an appeal is not filed within five days, appellate rights will be waived. The commander may grant an extension of time to appeal for good cause and upon written application received within the five-day appeal period.

4.5.2.4. Explains to the member that any documents supporting the appeal must be submitted at the same time the member makes the appeal decision.

4.5.2.5. Explains to the member that he or she is entitled to the advice of legal counsel in making the appeal decision.

4.5.3. The member must reflect his or her appeal decision by initialing only one appeal decision block in the member's appeal decision portion of the AF Form 3070, signing the form, and then annotating the date and time signed. See [paragraph 4.8](#) for guidance on completing the selection record decision for non-Air Force Reserve NCOs in the grade of E-6 and above and officers.

4.5.3.1. The member makes a choice between not appealing, appealing and submitting matters in writing, or appealing and not submitting matters in writing.

4.5.3.2. The appeal decision is a one-time decision made during the time limit for appeal explained in [paragraph 4.5.2.2](#). All documents supporting the appeal must be submitted at the same time as the appeal decision. If the member decides not to appeal, the imposing commander makes the UIF determination in the unfavorable information file action portion of the AF Form 3070 and continues processing the NJP action in accordance with [paragraph 4.8](#), if applicable, and [Section 6B](#). If the member decides to appeal, the imposing commander continues processing the appeal, and, if applicable, the filing decision required in accordance with [paragraph 4.8](#).

4.5.3.3. The member's decision to appeal or not to appeal in the member's appeal decision portion of the AF Form 3070 ends the time limit for appeal. If the imposing commander has not acted on the appeal, the member may withdraw the appeal. Pen and ink changes should be made in the member's appeal decision portion of the AF Form 3070 to reflect the member's decision not to appeal. Any changes should be initialed and dated by the member.

4.5.3.4. If the member refuses or fails to sign his or her appeal decision within the time limit for appeal, the commander notes in the member's appeal decision portion of the AF Form 3070 "member refused/failed to make appeal decision within the time limit for appeal" and initials and dates. The member's failure to timely respond is deemed a waiver of his or her right to appeal.

4.5.4. In the event a member in the grade of E-5 upon which NJP has been imposed promotes to E-6 prior to making an appellate election, an AF Form 3070B, or 3070D as appropriate, should be added as a supplement to the AF Form 3070A, allowing the member to make elections for NCO selection record purposes in accordance with [paragraph 4.8](#). A memorandum should be included as a formal attachment explaining the supplementation.

4.6. Action on Appeal by Imposing Commander.

4.6.1. The imposing commander examines the written matters submitted, if any, and must consult directly with the servicing SJA or an attorney on the servicing SJA's staff in lieu of the SJA. However, before providing an appeal recommendation on behalf of the SJA, the attorney from the SJA's staff must consult with the servicing SJA. **(T-3)**. This consultation must be annotated in AMJAMS. A non-attorney shall not provide punishment advice on behalf of the SJA. **(T-0)**. After receiving a recommendation, the commander may deny the appeal or grant the relief requested in whole or in part, by using his or her powers to suspend, mitigate, remit, or set aside the punishment.

4.6.2. The imposing commander records his or her decision on the appeal in the commander action on appeal portion of the AF Form 3070 by initialing the appropriate block and signing the form. If the imposing commander grants relief, he or she annotates the relief granted in the continuation portion of the AF Form 3070 as a continuation of the commander action on appeal. The annotation should state "As the commander who imposed nonjudicial punishment, I grant your appeal [(in full)(in part)] as follows: (State the specific relief granted)." If the commander grants full relief, do not forward the appeal. If the commander grants less than the full relief requested, forward the appeal to the appellate authority.

4.6.3. If the appeal is forwarded to the appellate authority, the imposing commander adds written comments by indorsement through the servicing legal office (see MCM, Part V, paragraph 7e), addressing any contentions raised by the member. The imposing commander states in the forwarding indorsement whether the member has served any portion of the punishment. The imposing commander includes in the package all written materials considered in imposing the punishment, including a summary of the member's oral presentation, if applicable, as well as a summary of any other information considered and its source. In the event there is a change of command after the commander initiates NJP, the

memorandum provided to the member notifying him or her of the change of commander should also be forwarded to the appellate authority. The indorsement may state the commander's rationale for imposing punishment and a recommendation for action on the appeal. **Note:** any written comment (e.g., memo, email, handwritten note) about the commander's rationale needs to be provided to the member.

4.7. Action on Appeal by Appellate Authority. The appellate authority reviews the written material forwarded by the initiating commander and the legal review required by MCM, Part V, Paragraph 7e. The legal review must be in writing. This material does not become part of the permanent record, but is returned to the SJA for filing. The appellate authority may deny the appeal or grant the relief requested in whole or in part, by using the same power as may be exercised by the imposing commander to suspend, mitigate, remit, or set aside the punishment. The appellate authority records his or her decision on the appeal in the appellate authority action on appeal portion of the AF Form 3070 by initialing the appropriate block and signing the form. Relief granted (either in full or in part) or denied is based upon the remaining punishment after the initiating commander acts on the appeal. Record any relief granted in continuation portion of the AF Form 3070 as a continuation of the appellate authority action on appeal. Unless otherwise stated, relief granted as a result of an appeal is effective from the date the punishment was initially imposed. See MCM, Part V, paragraph 7f(1). If all punishment is disapproved, the entire action must be set aside and removed from the member's record; an NJP action cannot consist of "no punishment." (T-0).

4.8. Officer Selection Record and Enlisted Selection Record Determination. Follow the procedures in AFI 36-2608, *Military Personnel Records System*, for completing the selection record portion of the AF Form 3070 for officers or enlisted members in the grade of E-6 and above. Refer to AFI 36-2608 for instruction on where to forward the NJP documents, to include records of vacation or supplemental proceedings (i.e., AF Forms 366 and 3212).

Chapter 5

SUPPLEMENTARY ACTIONS

Section 5A—Suspension, Mitigation, Remission, and Set Aside of Punishment

5.1. General Guidance. Use AF Form 3212 to record actions to suspend, mitigate, remit, or set aside punishment, unless such actions are accomplished as part of an appeal, which is governed by [Chapter 4](#).

5.2. Consultation Required. Commanders must consult the servicing SJA before taking action to suspend, mitigate, remit, or set aside a previously imposed punishment. **(T-3).** A commander may take such action upon his or her own initiative or upon a request from the member. A sample format is located in the Virtual Military Justice Deskbook.

5.3. Action by Successor in Command. A commander's power to suspend, mitigate, remit, or set aside NJP passes to any successor in command. For these purposes, the successor in command may be either:

5.3.1. The officer who succeeded to the command or the position of the officer who imposed the punishment and who is authorized to impose on the member the punishment involved; or

5.3.2. An officer authorized to impose on the member the punishment involved, if the member has been reassigned.

5.3.3. If a successor in command lacks authority, that officer forwards the member's request to the next superior authority. See MCM, Part V, paragraph 7f(1); AFD 51-2.

5.4. Suspension. See MCM, Part V, paragraph 6a. Suspension is the postponement of the application of all or part of the punishment for a specific probationary period, until a specified date. It will be automatically remitted (canceled) at the end of that period if the member does not violate the condition(s) of suspension. Suspension is often warranted for a first offense or where persuasive extenuating or mitigating circumstances exist.

5.4.1. A commander may, at any time, suspend any part or amount of the unexecuted punishment imposed. An executed punishment of reduction in grade or forfeiture may be suspended, provided the suspension is accomplished within a period of four months after the date imposed.

5.4.2. Suspension of punishment may not be for a period: (1) longer than six months from the date the suspension was imposed or (2) longer than six months from the date the original punishment was imposed. **(T-0).** The expiration of the member's current enlistment or term of service automatically terminates any period of suspension. **(Note:** Six months may be longer than 180 days; for example, 1 July punishment suspended through 31 December.) A suspension action will set a specific date after which, unless sooner vacated, the suspension will terminate and the punishment will be remitted. This date should not exceed the member's expiration of term of service at the time suspension action is taken.

5.4.3. When reduction in grade is later suspended, the member's original date of rank (DOR), held before the reduction, is reinstated. The effective DOR is the date of the document directing the suspension. See AFMAN 36-2604, *Service Dates and Dates of Rank*.

5.4.4. Suspension of a punishment automatically includes a condition that the service member will not violate any punitive articles of the UCMJ. Commanders may specify other conditions as well, but shall consult with the servicing SJA in accordance with **paragraph 5.2** before imposing them. **(T-3)**. Include any additional conditions of suspension within the punishment indorsement. The additional condition(s) upon which suspension is based must be clearly stated and capable of being completed during the period of suspension. **(T-0)**. A sample format is located in the Virtual Military Justice Deskbook.

5.4.5. The member, if undergoing a suspended reduction in grade, is ineligible for promotion, including testing and consideration if already tested. See AFI 36-2502. The member, if serving any suspended punishment, is ineligible to reenlist, but may be eligible for an extension of enlistment. See AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*.

5.5. Mitigation. See MCM, Part V, paragraph 6b. Mitigation is a reduction in either the quantity or level of a punishment with its general nature remaining the same. For example, a punishment of correctional custody for 20 days can be mitigated to correctional custody for 10 days or to restriction for 20 days. The first action lessens the quantity and the second lessens the quality, with both mitigated punishments remaining of the same general nature as correctional custody, that is, deprivation of liberty. However, a mitigation of 10 days correctional custody to 14 days restriction would not be permitted because the quantity has been increased. **(T-0)**.

5.5.1. With the exception of reduction in grade, only the unexecuted part or amount of the punishment can be mitigated. **(T-0)**.

5.5.2. A reduction in grade can only be mitigated to forfeitures. A reduction in grade will not be mitigated to a lesser reduction or no reduction. **(T-0)**. Mitigation of a reduction in grade must be done within four months after the date of execution. **(T-0)**. When mitigating a reduction in grade to forfeiture of pay, the amount of the forfeiture imposed may not be greater than the amount that could have been imposed by the officer who initially imposed the mitigated punishment. **(T-0)**. See MCM, Part V, paragraph 6b. If the reduction was executed, the DOR for the restored grade is the date of the indorsement mitigating the punishment. For example, if a member receives NJP consisting of a reduction in grade on 1 June, and on 1 July the commander subsequently mitigates the reduction to a forfeiture, both the effective date and DOR for the restored grade is 1 July. See AFMAN 36-2604.

5.5.3. A forfeiture of pay, to the extent to which it has not been executed, may be mitigated to a lesser forfeiture of pay, but cannot be mitigated to other forms of punishment. **(T-0)**.

5.5.4. Restraints on liberty (such as arrest, correctional custody, extra duties, and restriction) may not be mitigated to forfeitures or reduction in grade because the general nature of the punishment would be changed. **(T-0)**. Arrest in quarters can be mitigated to restriction; correctional custody can be mitigated to extra duties or restriction or both; extra duties can be mitigated to restriction; but restriction, being the least severe restraint on liberty, cannot be mitigated to a different form of punishment. When a restraint on liberty is mitigated, the lesser punishment may not run for a period greater than the remainder of the period for which the punishment mitigated was initially imposed. For example, when a person is given 15 days of correctional custody and has served five days of this punishment and correctional custody is mitigated to restriction, the mitigated punishment may not exceed restriction for a period of 10 days.

5.6. Remission. See MCM, Part V, paragraph 6c. Remission is simply the cancellation of any portion of the unexecuted punishment. An unsuspended reduction is executed on imposition. It can, therefore, never be remitted, but under appropriate circumstances may be suspended ([paragraph 5.4](#)), mitigated ([paragraph 5.5](#)), or set aside ([paragraph 5.7](#)).

5.7. Set Aside. See MCM, Part V, paragraph 6d. Set aside occurs when the punishment, or any part or amount thereof, whether executed or unexecuted, is removed from the record and any rights, privileges, pay, or property affected by the relevant portion of the punishment are restored. A set aside of all punishment voids the NJP. Commanders use AF Form 3212 to set aside punishment. A commander may not set aside punishment more than four months after execution of the punishment, unless the commander determines unusual circumstances exist and explains them in an attachment to AF Form 3212. **Note:** The servicing SJA should obtain guidance from the GCMCA SJA before initiating a set aside on an NJP punishment more than four months after the execution of punishment.

5.7.1. Set aside is not normally considered a rehabilitation tool, like suspension, remission, and mitigation. Commanders should not routinely set aside punishment, but should exercise this discretionary authority only in the rare and unusual case where a question concerning the guilt of the member arises or where the best interests of the DAF are served by clearing the member's record.

5.7.2. Setting aside a punishment in its entirety restores the member to the position held before imposition of the punishment, as if the NJP had never been initiated. For example, if a member has been reduced in grade through NJP, and the reduction is later set aside, the effective date and DOR revert to that held before reduction. See AFMAN 36-2604.

5.8. Limitations on Suspension, Mitigation, Remission and Set Aside of Punishment. A commander can suspend, mitigate, remit, or set aside NJP, only if the commander has the authority to impose that punishment. **(T-0).** For example, a commander in the grade of captain or lieutenant cannot suspend, mitigate, remit, or set aside punishment imposed by a field grade commander beyond what the captain or lieutenant could impose. A commander not empowered to act may recommend suspending, mitigating, remitting, or setting aside an action to the next superior authority empowered to impose such punishment(s).

5.9. Processing Requirements. Process and file all requests to suspend, mitigate, remit, or set aside punishment, and any actions taken in response, with the original NJP record and ensure inclusion with other official file copies.

Section 5B—Vacation of Suspension

5.10. General Guidance. Commanders must consult the servicing SJA before taking action to vacate a suspended punishment. **(T-3).** A commander may vacate all or a portion of the suspended punishment. Vacation of a suspended NJP is not itself NJP. A commander can impose NJP for the same violation of a punitive article of the UCMJ upon which the vacation action is based. MCM, Part V, paragraph 6a(5) provides further guidance on vacation actions.

5.11. Notification to the Member. Except when prevented by unauthorized absence of the member, the commander completes item 1 of the AF Form 366, signs and dates the form, and causes the member to be notified and advised of his or her rights, using the form. Normally, the commander notifies and serves the member, then signs and annotates the date and time the member was served notice of the proceeding in item 2 of the AF Form 366. Where circumstances prevent the commander from personally notifying and serving the AF Form 366 on the member or the commander elects not to do so, the commander may direct a subordinate, senior in rank to the member (when practicable), to notify and serve the member. The subordinate annotates the date and time of service and signs in item 2 of the AF Form 366 as the person serving the member. Regardless of who serves the member, provide the member with a copy of both pages of the AF Form 366. Make available to the member all statements and evidence upon which the commander intends to rely in making his or her decision.

5.11.1. The servicing SJA provides a description of the basis for the vacation (e.g., misconduct or failure to meet an additional condition upon which the suspension was based) and other information pertinent to the suspended punishment on the AF Form 366.

5.11.2. If a new commander assumes responsibility for the case after a vacation proceeding has been initiated, but before the vacation decision is made, inform the member of the identity of the new commander and provide three duty days to present matters. The new commander accomplishes this either by notifying the member about the change in writing or by withdrawing the old AF Form 366 and initiating a new vacation proceeding on a new AF Form 366. If the notification format is used, it becomes an attachment to the AF Form 366.

5.11.3. Notification of proceedings to vacate suspended NJP may be provided to officers by the commander who originally recommended that another commander punish the member under Article 15, UCMJ (e.g., the wing commander who recommended the numbered air force commander punish the member). This notification can be provided by modifying the AF Form 366 in block 1.d, to include the statement, "Upon receipt of your presentation, if any, the decision whether to vacate your punishment will be made by [Name/Grade of CC]."

5.11.4. The member may present matters in defense, extenuation, and/or mitigation regarding the violation on which the vacation action is based.

5.11.5. The member may make either a written presentation or personal appearance or both. If the member elects to make a personal appearance, he or she may personally appear before the commander authorized to vacate suspension of the NJP. If such an appearance is impracticable due to the unavailability of the commander or by extraordinary circumstances, the member may appear before a person designated by the commander who will prepare a summary of the personal appearance for the commander. At the personal appearance, the member may: (a) present evidence; (b) present witnesses who are reasonably available; and (c) be accompanied by someone to speak on his or her behalf. There is no requirement that a lawyer be made available to accompany the member at the personal appearance.

5.12. Member's Elections. The member has three duty days to make his or her elections. The member must initial in item 3 of the AF Form 366 whether the member consulted a lawyer, attached a written presentation, or requested a personal appearance before the commander. The commander may, upon written application, grant an extension for good cause.

5.12.1. If a member does not reply with his or her elections in time, the commander may continue with the proceedings and notes in item 3 of AF Form 366 “member failed to respond” and initials and dates.

5.12.2. The member’s failure to respond in time does not prevent the commander from continuing with the vacation proceedings. However, if the commander has reason to believe a failure to respond resulted from reasons beyond that individual’s control, the commander may not, without good cause, proceed with vacation proceedings.

5.13. Timing. Vacation of a suspension must be based on the violation of the condition(s) of the suspension and occur within the period of suspension. **(T-0).** See [paragraph 5.4.4](#) To vacate a suspension, the commander must present the member with the AF Form 366 before the end of the suspension period. **(T-0).** The suspension period is stayed if the member has been properly notified via AF Form 366 during the suspension period. The member’s unauthorized absence also stays the suspension period.

5.14. Commander’s Decision.

5.14.1. Following full and fair consideration of the evidence, including any matters presented by the member, using a preponderance of the evidence standard of proof, the commander indicates one of the following actions in item 4a of the AF Form 366 by initialing the appropriate block on the form:

5.14.1.1. The vacation proceedings are terminated because vacation of the suspended punishment is not appropriate or because the member did not violate the condition(s) of the suspension.

5.14.1.2. The member violated one or more of the conditions of the suspension. The commander lines out and initials any violations for which vacation of the suspended punishment is not appropriate or which the member did not violate.

5.14.2. The commander completes item 4 of the AF Form 366 and signs and dates the form in the indicated blocks.

5.14.2.1. If the commander terminates the proceedings, the original AF Form 366 is sent to the servicing SJA for appropriate AMJAMS entries. The AF Form 366 is then destroyed.

5.14.2.2. Punishment is recorded in item 9 of the AF Form 366 as a continuation of 4.a(2).

5.14.3. At the time a commander informs the member of the vacation decision, the commander directs the member to acknowledge the action taken on the proceedings of vacation of suspended NJP and that there is no right to appeal by signing and dating item 5 of the AF Form 366. **Note:** If the member refuses to acknowledge receipt of the vacation action, the commander notes in item 5 “member refused to acknowledge receipt of vacation action,” and initials and dates.

5.15. Effect on Suspended Reductions. If a reduction in grade is suspended, but the suspension is later vacated, the DOR in the grade to which the member is reduced is the date the original reduction was imposed by the commander. The effective date, however, is the date of the vacation action. See AFMAN 36-2604. For example, if the commander imposed punishment consisting of a suspended reduction in grade for six months on 1 June, and the commander subsequently vacates the suspension on 2 September, the effective date of the reduction is 2 September, but the member’s new DOR is 1 June. Pay is not retroactively recouped.

Chapter 6

MISCELLANEOUS MATTERS

Section 6A—Indorsing Forms and Correspondence

6.1. Procedure. Prepare any indorsements to AF Form 3070 using normal correspondence practices. Send the correspondence involved in processing NJP (including prescribed forms) through command channels, except as provided in [paragraph 6.9](#). Unless specifically prescribed, each intermediate commander decides whether to add matters of substance by indorsement. If so, they are signed as noted below.

6.2. Content of Indorsements.

6.2.1. Any intermediate commander or delegee may recommend action or provide other information that might help the superior commander in arriving at a decision.

6.2.2. Following actions by appropriate authority, any intermediate commander, delegee, or staff officer signing under the authority line may furnish information (including administrative instructions) to the member or to a subordinate commander by indorsement.

6.3. Original. The AF Form 3070 that contains all required signatures constitutes the “original.” The original AF Form 3070 may contain wet signatures, digital signatures, accurate reproductions of wet or digital signatures, or a combination thereof. See M.R.E. 1002 and 1003.

6.3.1. The member, upon signing the AF Form 3070, waives all rights to challenge at a later time the authenticity of any signature already contained on the AF Form 3070. The member waives his or her right to challenge the authenticity of any signature already contained on the AF Form 3070 if the member refuses to sign the form and does not specifically raise in writing the validity of the signatures at the time.

6.4. Copies. Copies of Article 15 documentation are reproduced from the signed original. The SJA ensures copies of all documents and attachments that will comprise the record of punishment, as set forth in [paragraph 6.16](#), are provided to the member and to each level of command involved.

Section 6B—Action Taken on Records of Punishment, Including Vacation, Suspension, Mitigation, and Set Aside Actions

6.5. Action by the Commander. The commander who imposed the punishment or who took action to vacate, suspend, mitigate, remit, or set aside, sends the record to the servicing SJA for review, comment, and recommendation, as appropriate.

6.5.1. If the punishment includes unsuspended correctional custody, the commander immediately notifies the correctional custody monitor of the details, including inclusive dates, to begin the punishment.

6.5.2. Before sending the AF Form 3070 to the servicing SJA, but after completing all other action, including appeal, the commander imposing punishment indicates whether the NJP record will be filed in an enlisted member's UIF by initialing, signing, and dating the appropriate block in the unfavorable information file action portion of the AF Form 3070. The imposing commander should make this determination even in cases that were appealed. However, if the imposing commander is not available, any person authorized by AFI 36-2907, *Adverse Administrative Actions*, may make the UIF determination. UIFs are mandatory for officers who receive NJP as noted on the AF Form 3070. The member must acknowledge or the command must note the member refused to acknowledge or was unable to acknowledge that he or she has been informed of the UIF decision before the SJA may complete the legal review.

6.5.2.1. It is within the commander's discretion to provide the member with an opportunity to respond to the UIF decision, regardless of whether the entry of the NJP record in the UIF is mandatory or optional.

6.5.2.2. In a joint or combined command or task force, if an officer assigned to a different service imposed NJP on a DAF member, the DAF officer identified in AFI 36-2907 must make the UIF decision.

6.5.2.3. The member acknowledges that he or she was informed about the commander's decisions on the UIF, selection record, and appeal, as applicable, by signing and dating the member's acknowledgement block on the AF Form 3070. If the member refuses to sign, the commander notes "member refused to sign" in this block and initials and dates. If the member is unable to sign, the commander notes "member unable to sign" in this block and initials and dates.

6.5.3. For enlisted members in the grade of E-6 and above, the commander must make a decision regarding selection record processing, and the member must acknowledge that he or she has been informed of the decisions before the servicing SJA may complete the legal review. For all officers, all completed nonjudicial punishment will be filed in the selection record in accordance with DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*. For enlisted members, if the commander elects not to file the NJP in the member's selection record, the NJP is not forwarded for superior commander review. The Air Force Reserve does not use SNCO selection records. The ANG does not use officer selection records.

6.5.4. In the event action to vacate, suspend, mitigate, remit, or set aside is taken by a new commander junior in rank to the imposing commander, the new commander has authority to act on any punishment imposed by the original imposing commander. This applies regardless of whether the new commander would have had the authority to impose the punishment as the imposing commander.

6.6. Action by the Servicing SJA. After acknowledgment of the UIF decision, the imposing commander returns the record to the servicing SJA. The reviewing attorney signs and dates the servicing SJA legal review block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable) when the record is found legally sufficient. The NJP action is then final and admissible in courts-martial for purposes of R.C.M. 1001(b)(2). This is also the final action for purposes of the timeliness metric as recorded in AMJAMS.

6.6.1. After completing the servicing SJA legal review, the servicing legal office expeditiously sends:

6.6.1.1. One copy of the record to the officer who supervises the correctional custody program if the case involves unsuspended correctional custody.

6.6.1.2. Two copies of the record, with an AF Form 1373, *MPO Document Control Log-Transmittal*, to the AFO if the punishment affects the member's pay. The SJA keeps a copy of the AF Form 1373. The person who provided the copies of the record to AFO will date and initial the appropriate part of the MPF and AFO distribution block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable) or mark "N/A" if not applicable.

6.6.1.3. One copy of the record to the unit UIF monitor if the record will be filed in a UIF. The unit UIF monitor is responsible for ensuring entry into a UIF. See AFI 36-2907.

6.6.1.4. One copy of the record to the servicing MPF, with an AF Form 1373, in all cases. The servicing legal office keeps a copy of the AF Form 1373. The person who provided the copy of the record to MPF will date and initial the appropriate part of the MPF and AFO distribution block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable).

6.6.1.5. The original record (and two complete copies for officer NJPs) to the SJA for the officer exercising GCMCA, after providing the record to the MPF and AFO and noting the date of receipt. File the receipted copy of AF Form 1373 as prescribed in [paragraph 6.17](#).

6.6.1.6. In cases involving officers, one copy of the record and all supporting documents to the member's commander for forwarding in accordance with AFI 90-301. See [paragraph 1.2.1.1](#). In all cases where the incident was investigated by OSI or Security Forces, provide the investigating office with sufficient information on final disposition to fulfill its respective reporting requirements.

6.7. Action by the Military Personnel Flight (MPF) and Accounting and Finance Office (AFO). The MPF and AFO, on receiving the record, acknowledge receipt on a copy of the AF Form 1373, take appropriate actions, and return this form to the servicing legal office.

6.8. Action by the GCMCA SJA. The GCMCA SJA or attorney from that SJA's staff performs a supervisory review on behalf of the GCMCA.

6.8.1. The GCMCA SJA review will include:

6.8.1.1. An administrative supervisory review of the AF Form 3070. This includes a review to ensure that: (1) the AF Form 3070 is properly completed, (2) jurisdiction over the member existed, and (3) the specifications stated an offense cognizable under the UCMJ.

6.8.1.2. An evidentiary review to ensure the standard of proof in [paragraph 3.4](#) is satisfied for each specification in the NJP.

6.8.2. The GCMCA legal office returns legally deficient proceedings to the servicing legal office for correction. The servicing legal office should pay particular attention to any deficiency that may require updating the effective date of punishment.

6.8.3. After review, the GCMCA reviewing attorney signs and dates the GCMCA SJA administrative supervisory review block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable) when the record is in compliance with DAFI 51-202 and sends a copy of it to the servicing SJA.

Section 6C—Filing of the Original Record on Nonjudicial Punishment Proceedings

6.9. Procedures. The GCMCA SJA sends the NJP action with the original signature of the GCMCA reviewer to one of the addresses listed in paragraphs 6.9.1 through 6.9.4 for filing in the master personnel record group. For instructions regarding the selection record portion of the AF Form 3070, where applicable, refer to [paragraph 4.8](#).

6.9.1. For Regular Air Force members and reservists on extended active duty (as defined in [Attachment 1](#)):

6.9.1.1. For general officers, send to AF/A1LG, 1040 Air Force Pentagon, Washington, DC 20330-1040. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM/FIELDCOM, send a copy to that MAJCOM's/FIELDCOM's SJA.

6.9.1.2. For O-6s or O-6 selects, send to AF/A1LO, 1040 Air Force Pentagon, Washington, DC 20330-1040. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM/FIELDCOM, send a copy to that MAJCOM's/FIELDCOM's SJA.

6.9.1.3. For E-9s or E-9 selects, send to AF/A1LE, 1040 Air Force Pentagon, Washington, DC 20330-1040. If the E-9 or E-9 select is a member of a tenant command from another MAJCOM/FIELDCOM, send a copy to that MAJCOM's/FIELDCOM's SJA.

6.9.1.4. For the following personnel, send to HQ AFPC/DP1ORM, 550 C Street West, Joint Base San Antonio-Randolph, TX 78150 and to the custodian of the command selection record group, as applicable:

6.9.1.4.1. Officers in the grade of O-5 or below (excluding O-6 selects); and

6.9.1.4.2. All enlisted personnel below the grade of E-9 (excluding E-9 selects).

6.9.2. For reservists not on extended active duty, send the original to HQ ARPC/DPTARA, 18420 E. Silver Creek Ave. Bldg. 390, MS 68, Buckley SFB, CO 80011.

6.9.3. For ANG members, send to the military justice attorney, Air National Guard Readiness Center, NGB-GC, 3501 Fetchet Avenue, Suite 431, Joint Base Andrews, MD 20762. Forward a copy of the ANG member's Title 10 orders with the NJP. NGB-GC serves as a central collection point for these actions and will notify the specific state adjutant general concerned and will determine ultimate disposition of the record.

6.9.4. For cases involving USAFA Cadets, send all records to HQ USAFA/DPY, 2360 Vandenberg Drive, Suite 3C24, USAF Academy, CO 80840-8720. Upon commissioning, these records will be forwarded to the officer master personnel record group, AFPC/DP1ORM, 550 C Street West, Joint Base San Antonio-Randolph, TX 78150-4723.

Section 6D—Criminal Indexing Required

6.10. Criminal History Record Data and Fingerprint Collection. The DAF, through OSI and Security Forces, must submit offender criminal history record data and fingerprints to the Federal Bureau of Investigation (FBI) when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See DoDI 5505.11; Title 28 Code of Federal Regulations (C.F.R.) Part 20; 28 U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*, and AFMAN 71-102. Criminal history record information reported includes identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge). This final disposition includes the imposition of NJP. See [paragraph 6.13](#).

6.10.1. Qualifying Offenses. Qualifying offenses are listed in DoDI 5505.11, with excluded non-serious offenses listed in AFMAN 71-102, Attachment 5.

6.10.2. Probable Cause Requirement. Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. **(T-0).** The collection of fingerprints under this paragraph does not require a search authorization or consent of the person whose fingerprints are being collected.

6.10.3. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. See paragraphs [6.10.1](#) and [6.10.2](#). The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).** SJAs must also ensure that completed 3070s for qualifying offenses are distributed to Security Forces, OSI, and the Department of the Air Force Criminal Justice Indexing Cell (DAF-CJIC) to ensure that the correct disposition is listed in the record. Failure to do so will result in the FBI having inaccurate information and reporting such information in response to law enforcement queries.

6.10.4. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data to the FBI in accordance with DoDI 5505.11. **(T-0).**

6.10.5. Final Disposition Requirement. The final disposition is submitted by OSI or Security Forces for each indexed offense. **(T-0).** OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). In the case of NJP, the legal office must, upon completion of the supervisory SJA review, promptly forward the completed AF Form 3070, 3212 or 366 to the local OSI detachment, Security Forces, and OSI/XI for inclusion of the final disposition. See [paragraph 6.13](#).

6.11. DNA Collection. The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Indexing System (CODIS), through the U.S. Army Criminal Investigative Laboratory (USACIL), when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See DoDI 5505.14; 28 C.F.R. Part 20; 28 U.S.C. 534. See DAFI 51-201 and DoDI 5505.14 for required SJA coordination, various timelines for submission of DNA and processing requirements. **Note:** As commanders conducting commander-directed investigations or other informal inquiries are required to coordinate with Security Forces for collection of DNA where required under DoDI 5505.14, SJAs must ensure commanders conducting commander-directed investigations or other informal inquiries are briefed on their responsibilities under DoDI 5505.14.

6.12. Firearms Possession Prohibited. 18 U.S.C. § 922 prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) further prohibits any person that fits within specified prohibited categories from possessing or obtaining a firearm. Some firearms prohibitors (e.g., Lautenberg Amendment violations) may trigger prohibitions on the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). See DAFI 51-201 and AFMAN 71-102 for required SJA coordination.

6.12.1. Categories of Prohibition. Categories of prohibition are listed at 18 U.S.C. § 922(g). **Note:** For purposes of NJP, the prohibition will most commonly be triggered where a member has received NJP for use, possession, distribution, introduction, manufacture, or diversion of a controlled substance. See AFMAN 71-102. The prohibition may also be triggered as a result of violation of a civilian protective order issued by a court. See 18 U.S.C. § 922(g)(8); DAFI 51-201.

6.12.2. Final Disposition Requirement. Final disposition of investigated charges must be forwarded to OSI and Security Forces to ensure a firearms prohibition is accurately recorded in the National Instant Criminal Background Check System (NICS). **(T-0).** The final disposition data is obtained from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). In the case of NJP, the legal office must, upon completion of the supervisory SJA review, promptly forward the completed AF Form 3070 (or AF Form 366 or 3212, when applicable) to the local OSI detachment, Security Forces, and OSI/XI for inclusion of the final disposition. See [paragraph 6.13](#). **NOTE:** While imposition of NJP may not trigger a prohibition under 18 U.S.C. § 922, NJP for qualifying offenses must still be forwarded to ensure disposition data is correct. See [paragraph 6.10](#).

6.13. Distribution of the Air Force Form 3070 for Criminal Indexing. In cases involving qualifying offenses which require criminal indexing, the SJA sends a copy of the final AF Form 3070 (or AF Form 366 or 3212, when applicable) to the local OSI detachment, local Security Forces Squadron Investigations Section (SFS/S2I), and the DAF-CJIC for final disposition. See 18 U.S.C. § 922; DoDI 5505.11 and DoDI 5505.14.

6.13.1. This requirement applies to any case for which the service member receiving NJP was investigated for an offense that requires criminal indexing or DNA submission under DoDI 5505.11, DoDI 5505.14, or 18 U.S.C. § 922. The SJA must consult with the investigating agency (OSI or Security Forces) or commander, in the event the investigation was a command-directed investigation or informal inquiry, to determine whether indexing is required.

6.13.2. Electronic Submission Preferred. In addition to promptly submitting the required documents discussed in **paragraph 6.13** to the local OSI detachment and local Security Forces unit, these documents should be submitted to the DAF-CJIC electronically to ensure timely processing. Documents should be submitted to daf.cjic@us.af.mil and may be submitted as attachments or via other secure method.

Section 6E—Effect of Errors in Nonjudicial Punishment Proceedings

6.14. Effect of Errors. See MCM, Part V, paragraph 1.i. An NJP proceeding is not legally sufficient if it contains an error that materially prejudices a substantial right of the member.

6.14.1. If such an error exists but is discovered prior to forwarding NJP to the superior authority, the imposing commander may either withdraw or set aside the Article 15, and may reinstate NJP action. If such an error exists and is discovered after the NJP is forwarded to the superior authority and it cannot be remedied within the same proceeding, the appropriate NJP authority sets aside the defective NJP action. In either case, a new action may be initiated but any punishment imposed as a result of an additional proceeding may be no more severe than that originally imposed.

6.14.2. If a material error exists and can be remedied within the same proceeding without prejudicing the member's rights, reflect the correction, whenever possible, as a pen and ink change on the form initialed and dated by the commander and the member. However, if a pen and ink change will not result in a clear and unambiguous corrected record, the commander, by indorsement to the form, should notify the member of the error and thoroughly explain the correction to the record. The member signs an acknowledgment to the commander's indorsement. The indorsement and acknowledgment become an attachment to the form.

6.14.3. Administrative or clerical errors and minor errors that do not materially prejudice a substantial right of a member do not require correction to make the NJP proceeding legally sufficient. However, such errors may be corrected with pen and ink changes in the manner described above.

Section 6F—Disposition of Records of Nonjudicial Punishment Proceedings

6.15. Governing Directive. The disposition of records of NJP is governed by the Air Force Records Disposition Schedule (RDS) located at <https://afrims.cce.af.mil/>. Legal offices are authorized to destroy copies of NJP records after three years, or when no longer needed, whichever is later.

6.16. Contents of Record. The record of punishment consists of the finalized AF Form 3070; any written response thereto submitted by the member and/or the member's defense counsel (**Note:** Additional materials submitted by the member in mitigation, extenuation, or defense are not part of the record); and if applicable, AF Forms 366, 3212, and any of their attachments. Those attachments include additional pages for punishment or statement of offenses, change of commander notifications (paragraphs **3.9.1** and **3.9.2**), waivers of the statute of limitations (**paragraph 3.12.4**), withdrawals of request for trial (**paragraph 3.21**), and indorsements correcting errors requiring explanation (**paragraph 6.14**). **NOTE:** The requirement to include any written responses provided by the member as part of the record only applies to NJPs served after the date of enactment of this publication.

6.17. Supporting Documentation. Supporting documentation includes evidence and other written materials considered as a basis for imposing punishment or vacating a suspended punishment. Supporting documentation also includes summaries of a member's oral presentation, initiating commander indorsements for appeals, and legal reviews for an appellate authority. File such evidence and other written materials in the office of the servicing SJA of the commander who initiated the NJP as attachments to the file copy of the action, except for AF Forms 1373. See RDS, Table 51-3, Rule 28. AF Forms 1373 are maintained in a single file separately from the Article 15 file, and in chronological sequence based on date of receipt.

Section 6G—Signatures

6.18. Form Completion. All NJP forms (AF Forms 3070, 3212, and 366) must be signed to be complete. All NJP forms should be signed in wet ink if practicable. If an individual is unable to wet sign the NJP form, the form may be completed with electronic signatures in accordance with AFI 33-322.

6.18.1. A member, by electing to waive his or her right to a court-martial and accept NJP proceeding, acknowledges and accepts that electronic signatures may be used on the NJP form.

6.18.2. See the Virtual Military Justice Deskbook for NJP forms that accept digital signatures and guidance when completing an NJP form with electronic signatures.

Chapter 7

CORRECTIONAL CUSTODY (REMOTIVATION) PROGRAM

Section 7A—Program Definition and Purpose.

7.1. Correctional Custody Defined. Correctional custody is an NJP option that commanders may impose for offenses under Article 15, UCMJ. It is not confinement, as that term is used in 10 U.S.C. § 972, *Members: effect of time lost*, and time served in correctional custody is not time lost under 10 U.S.C. § 972.

7.2. Purpose. Correctional custody provides commanders a secure setting in which to maintain discipline while reeducating and remotivating DAF members to become productive members of the DAF. Correctional custody may only be imposed on DAF members of grade E-5 and below.

7.3. Program Ownership and Evaluation. Installation commanders decide whether a correctional custody program is needed by balancing potential costs and benefits. If implemented, the installation commander is responsible for ensuring a legal and effective correctional custody program on his or her installation. Programs should be evaluated at least annually to determine whether there is a continued need for the correctional custody program.

7.3.1. Because depriving DAF members of their liberty is a severe punishment, use of this program requires careful consideration. Installation commanders should consider, among others, the following factors in determining the need for a correctional custody program:

- 7.3.1.1. Specific deterrent effect on potential entrants;
- 7.3.1.2. Cost of facility, staff, vehicles, and equipment;
- 7.3.1.3. Burden on units providing staff;
- 7.3.1.4. Savings from rehabilitating entrants instead of replacing them;
- 7.3.1.5. Value of work entrants do for the installation;
- 7.3.1.6. Potential number of entrants; and
- 7.3.1.7. Ability to maintain the health and safety of the entrants.

7.3.2. The installation commander approves local policies and procedures for operating the program and uses referral agencies to counsel and evaluate candidates. The installation commander also uses feedback from the unit commander, referral agencies, and program supervisor to evaluate the program's effectiveness.

7.3.3. Determining Success of Remotivation Program on Entrant. The unit commander who imposed correctional custody or superior commander decides if remotivation corrects an entrant's delinquent behavior. Unit commanders track and evaluate an entrant's progress in the program using regular reports from the program supervisor and referral agencies. Only the unit commander or a superior commander may terminate correctional custody prior to its expiration.

7.4. Optional Nature of Program. This program is optional. Commanders are not required to maintain a correctional custody program. However, in order to utilize the correctional custody program, the commander must implement a program that meets the requirements in this instruction.

Section 7B—Correctional Custody Program Facilities

7.5. Remotivation Housing. Use dormitories or other suitable housing. If quarters for unaccompanied personnel are used, clearly define the program area and make it off limits to people not involved in the program. Use partitions to make rooms in open-bay dormitories. In all cases, consider the need for fire, safety and emergency evacuation before program requirements. Detention cells co-located with law enforcement desks and DAF corrections system facilities are not to be used for this program.

7.6. Regional Facilities. If an installation facility is impracticable, installations may participate in a regional program. MAJCOMs and FIELDCOMs may determine the need for regional facilities. If the installation belongs to a separate MAJCOM or FIELDCOM, develop support agreements to define responsibilities.

Section 7C—Operating a Remotivation Area

7.7. Remotivation Plan. The installation commander determines whether to establish the program. If established, the installation commander is responsible for the program and designates a program supervisor for the program. The program supervisor will develop a local plan governing its operation in coordination with the SJA. The installation commander will review and approve the installation's program plan. Security Forces and legal office personnel shall not serve as the program supervisor.

7.7.1. The plan should include the following:

- 7.7.1.1. Purpose and policy;
- 7.7.1.2. Rehabilitation programs and responsibilities of referral agencies;
- 7.7.1.3. Standardized procedures for in-processing;
- 7.7.1.4. Daily schedules;
- 7.7.1.5. Responsibilities of unit commanders, program supervisors and staff;
- 7.7.1.6. Training and work programs, including how much "extra" duty to permit;
- 7.7.1.7. Guidelines for supervising and treating entrants; and
- 7.7.1.8. Local procedures for secure storage, issue, accountability, and destruction of entrant medications. The program staff strictly controls medical supplies and medication, documents all medication issues and dispositions, and files completed records in an entrant's established folder.

7.7.2. The training and work plan may include military, physical or technical training, productive work or other duties. Program entrants may be assigned details. Develop procedures for returning entrants to their normal duty sections for parts of the day as soon as possible after entry into the program.

7.7.3. Installation commanders incorporate a physical training routine at least three times a week into the entrant's curriculum. Prior to entering the program, the member's unit ensures the host medical facility conducts a health assessment. The purpose of the assessment should focus on the entrant's fitness to complete program requirements.

7.7.4. Unit Commander's Progress Review. Commanders maintain command authority for assigned personnel in the program, regardless of location. If imposed, the commander or first sergeant reviews the progress of the entrant weekly. Commanders must get base referral agencies to evaluate and contribute to the correction process by making referral appointments for entrants. Commanders are responsible for providing escorts to required referral appointments. Commanders may mitigate, remit, or suspend punishment for the following reasons:

7.7.4.1. The entrant's behavior is believed to have been corrected;

7.7.4.2. Remotivational treatment is no longer appropriate; and/or

7.7.4.3. Administrative discharge actions have begun.

7.8. Staffing. The installation commander determines the size of the program staff and carefully screens and selects NCOs to make sure they are responsible, dependable, mature, and meet all quality indicators. Law enforcement personnel, such as Security Forces staff, and legal office personnel are not assigned as staff members and are not part of the Program.

7.8.1. A panel consisting of a field grade officer, a chief master sergeant, and a first sergeant will be appointed by the installation commander to screen and recommend NCOs for remotivation staff duties. The installation commander may screen and detail additional staff from units with members assigned to the program when the staff temporarily needs them. Do not use corrections or confinement staff personnel to manage or staff a program facility. All NCOs appointed to the program staff retain their primary air force specialty code. The field grade officer serves as the program supervisor.

7.8.2. The program supervisor will:

7.8.2.1. Administer the program under the supervision of the installation commander and coordination with the installation's servicing SJA;

7.8.2.2. Oversee buildings and equipment;

7.8.2.3. Make sure correction is fair and effective;

7.8.2.4. Report any misconduct that may warrant disciplinary action to the responsible commander; and

7.8.2.5. Supervise entrants in the program area or assigned duties that are directly monitored.

7.8.3. The NCOIC of the program staff reports directly to program supervisor.

7.8.4. Prior to assigning members to the program staff, the installation commander must require each individual have proper CPR and other first-aid related training as determined by the medical group commander (MDG/CC).

7.8.5. The installation commander must have provisions established for when candidates of both genders are present. This will include, at a minimum:

7.8.5.1. At least one male staff member physically present when there is a male candidate in correctional custody.

7.8.5.2. At least one female staff member physically present when there is a female candidate in correctional custody.

7.8.5.3. Separate gender restrooms and shower facilities.

7.8.5.4. Separate gender sleeping quarters.

7.8.6. Program staff will ensure entrants are not unnecessarily separated by gender and will take steps to ensure entrants otherwise progress through the remotivation program with members of the opposite gender.

7.9. Training and Work Programs. Allow entrants to train and work in their own units as they progress in the program. Each unit supervises entrants attached to it for training or work and designs duties so entrants meet performance standards in their AFSC by the end of the program.

7.9.1. Supervisors of regional program facilities will designate work and training units for candidates, thus returning candidates to their AFSC whenever possible.

7.9.2. Each facility uses offices such as base legal, a local professional military academy, and the Military Equal Opportunity office to educate entrants on professional military subjects.

7.10. Supervising Candidates. Supervise entrants at all times in the program area, and know where they are at other times. Program supervisors and staff will not carry weapons or use any form of personal restraints, such as handcuffs. Staff members must abide by the following standards when dealing with entrants:

7.10.1. Act in accordance with the requirements of Part V, MCM and this instruction. **(T-0).**

7.10.2. The following aspects of program staff member behavior require special emphasis and the program supervisor immediately reviews any violations:

7.10.2.1. Personal dignity of all individuals is observed and any act or work assignment that demeans, degrades, humiliates or serves only to embarrass an individual is expressly prohibited.

7.10.2.2. Physical abuse, hazing, bullying, use of unnecessary force, and any form of corporal punishment by staff is prohibited. The use of profanity by staff is prohibited. Striking a candidate is prohibited. Use of physical force upon candidates is prohibited except in self-defense, to prevent serious injury to others or the entrant, to prevent serious damage to property, to effect an authorized search, or to quell a disturbance. In such cases, the amount of force used is the least amount necessary to bring the situation under control.

7.10.2.3. Sexual harassment is prohibited. This behavior interferes with an individual's performance and creates an intimidating, hostile and offensive environment. Whether the individual is an entrant or staff member, sexual harassment denies the individual respect and dignity, and is contrary to the mission of the facility.

7.11. Disciplining Candidates. The commander who imposes punishment also disciplines entrants who commit violations while in the program. The installation commander may empower the program supervisor to withdraw in-house privileges from entrants who commit minor violations. The program supervisor must establish disciplinary guidelines.

7.12. Clothing for Candidates. Program entrants must wear the prescribed uniform in the program area and in training or work programs. Do not use special or distinctive uniforms, armbands, or other devices to identify entrants.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Uniform Code of Military Justice, *10 U.S.C. § 801, et seq.*

Manual for Courts-Martial (MCM), *United States, 2019 Edition*

10U.S.C. § 802, *Persons subject to this chapter*

10U.S.C. § 815. *Commanding officer's non-judicial punishment*

10U.S.C. § 854, *Record of trial*

10U.S.C. § 865. *Transmittal and review of records*

10U.S.C. § 972, *Members: effect of time lost*

10U.S.C. § 8013, *Secretary of the Air Force*

18U.S.C. § 922, *Unlawful acts*

28U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*

28C.F.R. Part 20, *Criminal Justice Information Systems*

Rule for Courts-Martial (R.C.M.) 907(b)(2)(B)

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Military Rule of Evidence (M.R.E.) 1002

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Executive Order 9397, *Number System for Federal Accounts Relating to Individual Persons*, 22 November 1943

DoDI 5400.11, *DoD Privacy and Civil Liberties Programs*, 29 January 2019

DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*, 31 October 2019

DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*, 22 December 2015

AFPD 51-2, *Military Justice and Other Criminal Proceedings*, 21 June 2021

DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, 26 February 2021

AFI 25-201, *Intra-Service, Intra-Agency, and Inter-Agency Support Agreements Procedures*, 18 October 2013

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

DAFI 33-360, *Publications and Forms Management*, 21 July 2021

DAFI 51-201, *Administration of Military Justice*, 15 April 2021

AFI 36-2502, *Enlisted Airmen Promotion and Demotion Programs*, 16 April 2021

AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, 20 September 2019

AFI 36-2608, *Military Personnel Records Systems*, 16 April 2021

AFI 36-2907, *Adverse Administrative Actions*, 22 May 2020

AFI 38-101, *Manpower and Organization*, 29 August 2019

AFI 51-509, *Appointment to and Assumption of Command*, 14 January 2019

AFI 90-301, *Inspector General Complaints Resolution*, 28 December 2018

AFMAN 36-2604, *Service Dates and Dates of Rank*, 28 December 2018

AFMAN 71-102, *Air Force Criminal Indexing*, 21 July 2020

AFDP 3-30, *Command and Control*

Joint Federal Travel Regulations, *current edition*

Joint Publication 1, *Doctrine for the Armed Forces of the United States*, 12 July 2017

Crist v. Bretz, 437 U.S. 28 (1978)

United States v. Moore, 32 M.J. 170 (CMA 1991)

Prescribed Forms

AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (E-1 through E-5)*

AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (E-6 through E-9)*

AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officers)*

AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (E-6 through E-9) – Air National Guard Only*

AF Form 3070E, *Record of Nonjudicial Punishment Proceedings (Officers) – Air National Guard Only*

AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*

AF Form 3212, *Record of Supplementary Action under Article 15, UCMJ*

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

AF Form 1373, *MPO Document Control Log-Transmittal*

Abbreviations and Acronyms

AB—Airman Basic

ADCON—Administrative control

AF—Air Force

AF/A1M—Air Force Director of Manpower, Organization and Resources

AF/CV—Vice Chief of Staff of the Air Force

AF/IAJ—Military Justice and Discipline Domain

AF/IAJI—Investigations, Inquiries and Relief Division

AF/IAJM—Military Justice Law and Policy Division

AFDW—Air Force District of Washington

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFO—Accounting and Finance Office

AFRC—Air Force Reserve Command

AMJAMS—Automated Military Justice Analysis and Management System

ANG—Air National Guard

CC—Commander

CDI—Commander Directed Investigation

CMA—Court of Military Appeals

CMSGT—Chief Master Sergeant

CODIS—Combined Deoxyribonucleic Acid Indexing System

CSAF—Chief of Staff of the Air Force

CSO—Chief of Space Operations, United States Space Force

DAF—Department of the Air Force

DAF-CJIC—Department of the Air Force Criminal Justice Indexing Cell

DAFI—Department of the Air Force Instruction

DNA—Deoxyribonucleic Acid

DoD—Department of Defense

DoDI—Department of Defense Instruction

DOR—Date of Rank

FBI—Federal Bureau of Investigation

FIELD COM—Field Command

GCMCA—General Court-Martial Convening Authority

IG—Inspector General

MAJCOM—Major Command

MDG/CC—Medical Group Commander
MCM—Manual for Courts-Martial
MPF—Military Personnel Flight
MSS—Mission Support Squadron
NCOIC—Non-Commissioned Officer in Charge
NICS—National Instant Criminal Background Check System
NGB—National Guard Bureau
NGB-GC—National Guard Bureau, Office of the General Counsel
NJP—Nonjudicial Punishment
OPR—Office of Primary Responsibility
OSI—Office of Special Investigation
OSI/XI—Office of Special Investigation Warfighting Integration Directorate
PII—Personally Identifiable Information
R.C.M.—Rule for Courts-Martial
RDS—Records Disposition Schedule
RIP—Report on Individual Personnel
SAF/IGS—Secretary of the Air Force, Inspector General, Senior Official Inquiries Directorate
SAFO—Senior Air Force Officer
SECAF—Secretary of the Air Force
SFOI—Security Force Office of Investigation
SFS—Security Forces Squadron
SFS/S2I—Security Forces Squadron Investigations Section
SJA—Staff Judge Advocate
SNCO—Senior Non-Commissioned Officer
SPOC—Space Operations Command
SSFO—Senior Space Force Officer
SSGT—Staff Sergeant
TDY—Temporary Duty
TSGT—Technical Sergeant
UCMJ—Uniform Code of Military Justice
UIF—Unfavorable Information File
USACIL—U.S. Army Criminal Investigative Laboratory

USAFA—United States Air Force Academy

U.S.C.—United States Code

UTA—Unit Training Assembly

VCSSO—Vice Chief of Space Operations, United States Space Force

Terms

Activity Outside the Department of the Air Force—An organization or agency to which DAF members are assigned or attached that is not part of the Air Force or Space Force. They include, but are not limited to, Defense Agencies, DoD field activities, and consolidated units, such as consolidated flying units. While joint and combined organizations are not part of the Air Force or Space Force, they are not considered “activities outside the Department of the Air Force” for the purpose of this instruction.

Air Force Unit—A named or numbered military organization constituted by directives issued by HQ USAF. Air Force units include major commands, numbered air forces, wings, groups, squadrons, centers, direct reporting units, field operating agencies, and provisional units. See AFI 38-101. They also include deployable units formed from air expeditionary forces, such as air expeditionary wings, groups or squadrons that are attached to an Air and Space Expeditionary Task Force or an in-place Numbered Air Force that has been directed by a MAJCOM to support a joint force commander. A duly constituted unit will have a commander who has assumed or been appointed to command in accordance with AFI 51-509.

Commander—A commissioned officer who has assumed or been appointed to command of an Air Force or Space Force organization in accordance with AFI 51-509.

Extended Active Duty—A tour of Title 10 active duty, other than active duty for training or temporary tours of active duty, performed by a member of an Air Force Reserve component that is normally for a duration in excess of 90 days. Strength accountability for persons on extended active duty changes from Air Reserve Component to the active force.

General Court-Martial Convening Authority—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

Installation—As used in this instruction, installation refers to DAF property under the control and orders of a commander.

Joint Force—A joint force is composed of significant elements, assigned or attached, of two or more Military Departments operating under a single commander authorized to exercise operational control over the force to accomplish an assigned mission. Joint forces are established at unified commands, specified commands, subordinate unified commands, and joint task forces. Joint forces organizationally consist of a joint force commander, a joint staff organization, and Service component commands. See Joint Publication 1, *Doctrine for the Armed Forces of the United States*.

Next Superior Authority—For purposes of NJP under Article 15, UCMJ, the next superior authority is generally the immediate Department of the Air Force commander superior to the officer who imposed the punishment. The next superior authority must be superior or equal in grade to the commander who imposed punishment. See AFD 51-2.

Officer—A commissioned officer or United States Air Force Academy cadet.

Principal Assistant—The commander's principal assistant is the officer who would assume command in the event of the commander's death, prolonged absence, or disability, or the vice or deputy commander of the organization. However, if that officer is located at another station, the commander may delegate authority to the officer on the commander's station who is next eligible to assume command. Principal assistants must be military officers to exercise NJP authority and may impose only the amount of punishment authorized for their grades. See AFD 51-2.

Space Force Unit—Space Force units include field commands and deltas, garrisons, centers, direct reporting units, field operating agencies, and provisional units. They also include deployable units formed that are attached to Air and Space Expeditionary Task Force that has been directed by a FIELD COM to support a joint force commander. A duly constituted unit will have a commander who has assumed or been appointed to command in accordance with AFI 51-509.

Special Court-Martial Convening Authority—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 36-2907**



14 OCTOBER 2022

Personnel

**ADVERSE ADMINISTRATIVE
ACTIONS**

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This publication implements Air Force Policy Directive (AFPD) 36-29, *Military Standards*, and establishes instruction of the management of unfavorable information file (UIF) program, control rosters, letters of reprimand (LOR), letters of admonishment (LOA), and letters of counseling (LOC). It has been developed in collaboration between the Deputy Chief of Staff for Manpower, Personnel, and Services (AF/A1); Chief of the Air Force Reserve (AF/RE); Deputy Chief of Space Operations for Personnel (SF/S1); and the Director of the Air National Guard (NGB/CF). This instruction applies to uniformed members of the United States Space Force (USSF), the Regular Air Force (RegAF), the Air Force Reserve (AFR), the Air National Guard (ANG) on Title 10 orders, and the Civil Air Patrol Reserve Assistance Program. ANG personnel on Title 32 status must utilize the following guidance unless otherwise directed by state law. This instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 (Title 5 United States Code (USC) Section 552a, *Records Maintained on Individuals*) authorized by Department of Defense Instruction (DoDI) 5400.11, *DoD Privacy and Civil Liberties Programs*. The applicable System of Record Notices F036 AFPC L, *Unfavorable Information Files*, and F036 AFPC C, *Military Personnel Records System*, are available at <https://dpcl.d.defense.gov/Privacy/SORNs/>. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule which is located in the Air Force Records Information Management System. Refer recommended changes and questions about this publication to the office of primary responsibility using the Department of the Air Force (DAF) Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate functional

chain of command. This publication may be supplemented at any level, but all supplements that directly implement this publication must be routed to the OPR for coordination. All major command (MAJCOM)/field command (FLDCOM)-level supplements must be approved by the Human Resource Management Strategic Board prior to certification and approval. The authorities to waive wing, unit, or delta level requirements in this publication are identified with a tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See Department of the Air Force Manual 90-161, *Publishing Processes and Procedures*, for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority, or alternately, to the requestor’s commander for non-tiered compliance items. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Department of the Air Force. Compliance with this instruction is mandatory.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. This rewrite is in response to the National Defense Authorization Act for Fiscal Years 2020 and 2021, as codified in 10 USC §§ 615(a)(3) and 14107(a)(3)(A), which requires adverse information to be furnished to selection boards considering regular officers for promotion to the grades of major and above, and reserve officers to colonel and above. Substantial additions have been added to this regulation, directing specific adverse information to be updated in officer selection records (OSR) and providing specific examples of the templates required.

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Chapter 1

OVERVIEW, ROLES, AND RESPONSIBILITIES

1.1. Overview. Adverse administrative actions are intended to improve, correct, and instruct subordinates who violate established Department of the Air Force (DAF) standards whether on or off duty. Misconduct generally should be addressed at the lowest possible level, as soon as possible, to ensure an Airman's or Guardian's career is not negatively affected unnecessarily. The decision to utilize these quality force management tools should be based primarily on two factors: the nature of the incident and the previous disciplinary record of the Airman or Guardian. In deciding what type of action to take, consider the seriousness of the Airman's or Guardian's departure from established standards. Additionally, adverse administrative action should be used as part of a progressive discipline process; however, there is no requirement to issue a lower level action to address an Airman's or Guardian's first instance of misconduct. Some misconduct warrants a more severe form of action or action from higher in the chain of command.

1.1.1. LOCs, LOAs, and LORs are quality force management tools available to supervisors, superiors, and commanders. These tools are disciplinary and corrective in nature, but not punitive.

1.1.2. The UIF is an official record of unfavorable information about an individual. It documents administrative, judicial, and nonjudicial actions.

1.1.3. The control roster is a rehabilitative tool commanders may use to establish a 6-month observation period.

1.1.4. Nonjudicial Punishment under Article 15, Uniform Code of Military Justice is a disciplinary measure more serious than administrative action but less serious than a court-martial.

1.1.5. A civilian director filling a position equivalent to that of a commander has the same authorities regarding UIFs and control rosters as a commander on G-Series orders. (See AFI 51-509, *Appointment to and Assumption of Command*).

1.1.6. Raters should consider making comments on performance reports when the ratee receives an LOC, LOA, or LOR. See DAFI 36-2406, *Officer and Enlisted Evaluation Systems*, for additional guidance regarding appropriate performance report comments.

1.1.7. LOCs, LOAs, and LORs are subject to the rules of access, protection, and disclosure outlined in The Privacy Act of 1974. **(T-0)** The same rules apply to copies kept by supervisors and commanders and those filed in an individual's UIF or the unit's personnel information file (PIF) on the particular member. **(T-0)**

1.2. Adverse Information for Total Force Officer Selection Boards Overview. All adverse information an officer receives will be filed in the OSR and will be considered by promotion selection, special selection, federal recognition (ANG specific), and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information" per Department of Defense Instruction (DoDI) 1320.14, *DoD Commissioned Officer Promotion Program Procedures*). **(T-0)**

1.2.1. Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature.

To be credible, the information must be resolved and supported by a preponderance of the evidence. **(T-0)** To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. **(T-0)** Adverse information includes, but is not limited to:

1.2.1.1. Any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation or inquiry, regardless of whether command action was taken as a result (reference [paragraph 1.2.7](#)). **(Note:** While some investigations [e.g., Inspector General, Commander Directed or Equal Opportunity investigations] conclude with substantiated or not substantiated findings, investigations conducted by certain authorities, such as Security Forces or the Office of Special Investigations (OSI), neither substantiate nor refute allegations. Consequently, Security Forces and OSI investigations are not considered adverse information. However, command action taken as a result of information presented in an SF or OSI Report of Investigation is considered adverse information and must be filed in the OSR if a letter of admonishment or higher was issued). **(T-0)**

1.2.1.2. Approved court-martial findings of guilt (Court-Martial Orders or Entry of Judgement).

1.2.1.3. Nonjudicial punishment pursuant to Article 15, UCMJ.

1.2.1.4. LORs.

1.2.1.5. LOAs.

1.2.1.6. Notice of Relief of Command (for cause). Sample memorandum provided at [Attachment 9](#). The subject officer will be provided a copy of the Memorandum for Record (MFR) and will be afforded an opportunity to submit written comments in response to the filing of the Notice of Relief of Command (for cause) in the OSR. This is a response to the OSR filing and not the adverse action issued to the officer. The MFR and the officer's comments (if any) will be sent to the Secretary of the Air Force, Office of the Inspector General, Complaints Resolution Directorate (SAF/IGQ), in accordance with AFI 90-301, *Inspector General Complaints Resolution*, Tables 4.4, 7.1 and 8.2, and to the member's Military Personnel Flight (MPF), Commander's Support Staff (CSS), or equivalent personnel support function for inclusion in the Master Personnel Records Group (MPerRGp) and OSR.

1.2.1.7. LOC related to a substantiated finding or conclusion from an officially documented investigation or inquiry.

1.2.1.8. Developmental Education Removal (for cause). The subject officer will be provided a copy of the MFR and will be afforded an opportunity to submit written comments in response to the filing of the Developmental Education Removal (for cause) in the OSR. This is a response to the OSR filing and not the adverse action issued to the officer. The MFR and the officer's comments (if any) will be sent to SAF/IGQ, in accordance with AFI 90-301, Tables 4.4, 7.1, and 8.2, and to the member's MPF, CSS, or equivalent personnel support function for inclusion in the MPerRGp and OSR.

1.2.2. LOCs unrelated to a substantiated finding or conclusion from an officially documented investigation or inquiry will not be considered adverse information. **(T-0)** This preserves commanders' ability to administratively document and rehabilitate minor instances of substandard behavior or misconduct without making it a part of the permanent record (also referred to as "standalone" LOCs)

1.2.3. All adverse information as defined by this instruction will be permanently placed in the MPerRGp. **(T-0)** Except for the set aside of a court-martial or nonjudicial punishment, removal of adverse information from the MPerRGp may only be directed pursuant to an Air Force Board for Correction of Military Records (AFBCMR) recommendation. **(T-1)**

1.2.4. Approved court-martial findings of guilt are retained in the OSR permanently unless the findings are overturned on appeal or set aside in their entirety, and the member is not subsequently found guilty at a rehearing or new trial. **(T-0)** If removed from the OSR for this reason, this is not considered adverse information and will not be filed in the MPerRGp. **(T-0)** All other adverse information filed in the OSR will remain in the OSR.

1.2.4.1. For O-6 and below boards and processes. For ten years, except for substantiated conduct, any single act of which, tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than one year. **(T-0)** If the exception is met, the adverse information will remain in the OSR. **(T-0)** Except for the set aside of a court-martial or nonjudicial punishment, earlier removal of adverse information from the OSR may only be directed pursuant to an AFBCMR recommendation. **(T-0)**

1.2.4.2. For general officer promotion boards. For (1) ten years, except for substantiated conduct, any single act of which, tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than one year; or (2) until the United States Senate considers it and confirms the officer. **(T-0)** Except for the set aside of a court-martial or nonjudicial punishment action, earlier removal of adverse information from the OSR may only be directed pursuant to an AFBCMR recommendation. **(T-0)**

1.2.5. The date of command action is used to establish the 10-year time period. **(T-0)**

1.2.5.1. For adverse cases described below in [paragraph 1.2.7](#) for which there is no command action, the date of the substantiated adverse finding(s) or conclusion(s) from the officially documented investigation or inquiry is used to establish the time period. In neither case is the date of the incident used. If the exception in the ten-year rule is met, the adverse information will be retained in the OSR permanently. **(T-0)**

1.2.5.2. MAJCOM and FLDCOM staff judge advocates will provide a separate memorandum articulating whether the officer's adverse information meets or does not meet the exception to the 10-year retention rule as outlined in [paragraph 1.2.4](#) and [paragraph 1.2.5.1](#) for retention beyond 10-years. The memorandum will be included with the command action documents submitted to the MPF, CSS, or equivalent personnel support function for inclusion in the MPerRGp. **(T-1)**

1.2.6. Notwithstanding the 10-year retention rule in [paragraph 1.2.4.1](#), in those instances where an officer had extraordinary adverse information that was not, but should have been reviewed by a promotion selection board, promotion process, or promotion review board prior to the officer's promotion, and the adverse information was subsequently removed from the

officer's OSR, the extraordinary adverse information will be provided to a review board, as appropriate, or to the next board or process for consideration. **(T-0)**

1.2.7. Additional Information Pertinent to Officially Documented Investigations or Inquiries. In the event that an officially documented investigation or inquiry concludes with a substantiated finding and a commander (or equivalent) decides not to issue written command action (e.g., Record of Individual Counseling (RIC), LOC, LOA, LOR, and Non-Judicial Punishment), to include verbal counseling, the findings and the commander's decision must still be documented and filed in the MPerRGp and OSR via a MFR (sample provided at [Attachment 6](#)) and Adverse Information Summary (AIS) (sample provided at [Attachment 7](#)). **(T-0)**

1.2.7.1. The AIS must include the following: (1) grade and position at time of allegation, (2) summary of what the officer did, (3) investigating agency, (4) findings, (5) date findings approved, (6) command actions taken (e.g., verbal counseling or no command action), and (7) reason for command action (or no command action). **(T-0)**

1.2.7.2. The subject officer will be provided a copy of the MFR and AIS and will be afforded an opportunity to submit written comments in response to the documents before they are filed in the OSR (see [Chapter 2](#) for response times). **(T-0)** The MFR, AIS, and written response submitted by the will be sent to SAF/IGQ, in accordance with AFI 90-301, and to the member's MPF, Commander's Support Staff (CSS), or equivalent personnel support function for inclusion in the MPerRGp and OSR. **(T-0)**

1.2.8. Historic adverse information issued prior to the date of the implementation of this instruction will be filed in the MPerRGp. **(T-0)** Subject to the rules in both paragraphs [1.2.4](#) and [1.2.5.1](#), on retention of adverse information in an OSR, select historic adverse information that was issued prior to the date of the implementation of this instruction, will also be filed in the OSR (refer to [Attachment 8, Figure A8.1](#) and [Figure A8.2](#)). **(T-0)** This direction applies even in those situations in which a commander elected not to file the adverse information in an OSR or where the adverse information was removed from an OSR pursuant to previous guidance. Historic adverse information, not already contained in the MPerRGp or OSR that must now be filed includes each of the following:

1.2.8.1. Field Grade Officer (FGO) Adverse information disposition (reference [Attachment 8, Figure A8.1](#)) where the disposition was assessed when the member was an FGO:

1.2.8.1.1. Nonjudicial punishment pursuant to Article 15, UCMJ. **(T-0)**

1.2.8.1.2. Adverse information that received significant media attention or is of interest to the Senate Armed Services Committee (Extraordinary Adverse), as provided in DoDI 1320.04, *Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation*, Enc. 6, paragraph 2(a)(2)(a). **(T-0)**

1.2.8.1.3. Notices of Relief of Command (for cause) issued on or after 1 January 2012. **(T-0)**

- 1.2.8.1.4. Substantiated finding(s) or conclusion(s) from an officially documented investigation or inquiry, approved on or after 1 January 2012, where a commander decided not to issue written command action or the command action is not available. **(T-0)** The current commander of the officer, in cooperation with the officer's commander at the time the substantiated finding was approved, if available, must follow the process in [paragraph 1.2.7](#). **(T-0)**
- 1.2.8.1.5. LORs and LOAs issued on or after 1 January 2012. **(T-0)**
- 1.2.8.1.6. LOCs issued on or after 1 January 2012 related to a substantiated finding or conclusion from an officially documented investigation or inquiry. **(T-0)**
- 1.2.8.1.7. Notices of Developmental Education Removal (for cause) issued on or after 1 January 2012.
- 1.2.8.2. Company Grade Officer (CGO) adverse information disposition (reference [Attachment 8, Figure A8.2](#)) where the disposition was assessed when the member was a CGO:
- 1.2.8.2.1. Nonjudicial punishment pursuant to Article 15, UCMJ. **(T-0)**
- 1.2.8.2.2. Adverse information that received significant media attention or is of interest to the Senate Armed Services Committee (Extraordinary Adverse), as provided in DoDI 1320.04, Enc. 6, paragraph 2(a)(2)(a). **(T-0)**
- 1.2.8.3. Officers are not required to furnish historic adverse information on themselves. All required historic adverse information will be migrated by the Air Force Personnel Center and the Air Reserve Personnel Center from existing data systems into the Automated Records Management System and made part of the MPerRGp and OSR. **(T-0)** Adverse information already in the OSR regardless of when issued and received must remain in the OSR, unless removed under the rules in [paragraph 1.2.4](#) (and its subparagraphs). **(T-0)**
- 1.2.9. Officers are responsible for ensuring the accuracy of their records prior to meeting any promotion board. Officers who have adverse information as part of their history should check the Personnel Records Display Application to ensure that a full record of the adverse information is in their record, to include the full response, if applicable.
- 1.2.10. Officers will not receive an additional opportunity to respond to the adverse information or provide information to the board, with the exception of the right to communicate with the promotion board directly via letter. **(T-0)** Officers may elect to write a letter to the board in accordance with DAFI 36-2501, *Officer Promotions and Selective Continuation*; AFI 36-2504, *Officer Promotion; Continuation and Selective Early Removal in the Reserve of the Air Force*; or Air National Guard Instruction (ANGI) 36-2505, *Federal Recognition Examining Boards for Appointment or Promotion in the ANG Below General Officer*, to address adverse information included in the OSR.
- 1.2.11. Unless otherwise directed, general officers with adverse information not documented in their officer performance report or their OSR will continue to have a Senior Officer Unfavorable Information File (SOUIF) created for consideration by a selection board (guidance on SOUIF is provided in AFI 90-301).

1.2.12. Removing Officer Adverse Information from the OSR. Following the 10-year disposition period, the AFPC Special Programs office notifies the ARMS program manager for removal of adverse information from an officer's OSR, unless the adverse information meets the exception to the 10-year retention rule as outlined in [paragraph 1.2.4](#) and [paragraph 1.2.5.1](#) for retention beyond 10-years. (See also [paragraph 1.2.4.2](#), removal after consideration by the Senate).

1.3. Roles and Responsibilities.

1.3.1. Air Force Deputy Chief of Staff, Manpower, Personnel and Services (AF/A1). Establishes personnel guidance in collaboration with the Deputy Chief of Space Operations for Personnel (SF/S1), AF/RE, and NGB/CF, develops Department of the Air Force Instructions and submits to the Assistant Secretary of the Air Force, Manpower and Reserve Affairs (SAF/MR) for coordination and concurrence prior to publication.

1.3.2. Air Force Directorate of Military Force Management Policy (AF/A1P). Provides oversight for Adverse Administrative Actions addressed in this instruction and collaborates with the Space Force Force Management Policy (SF/S1P), ANG, and AFR on all policy changes.

1.3.3. Air Force Personnel Center (AFPC) and Air Reserve Personnel Center (ARPC) Promotions, Reenlistments, and Assignment Offices will monitor UIF, control roster, and Code 2 updates and reconcile Military Personnel Data System (MilPDS) mismatches, as necessary.

1.3.4. Headquarters Individual Reservist Readiness & Integration Organization (HQ RIO) Promotions, Reenlistments, and Assignments Offices will monitor UIF, control roster, and Code 2 updates, complete required promotion eligibility status and reenlistment eligibility code updates, and reconcile MilPDS mismatches, as necessary.

1.3.5. The Military Personnel Flight (MPF) will:

1.3.5.1. Manage adverse administrative actions for units without a CSS.

1.3.5.2. Monitor all transaction register (TR) remarks associated with adverse actions and take appropriate actions.

1.3.5.3. Maintain a copy of all appointment letters for current unit Adverse Administrative Actions Managers.

1.3.5.4. Consult [Table 3.1](#) to identify the appropriate Adverse Administrative Actions Manager for members of the AFR and ANG.

1.3.5.5. Provide necessary personnel support for units without a CSS and ensure proper entering of adverse information for inclusion in the MPerRGp and OSR, as directed.

1.3.5.6. Provide appropriate notification to unit commander and installation judge advocates when Air Force Personnel Center confirms adverse information has been placed into a member's selection record. **Exception:** For Office of Special Investigation (OSI) CSSs and GSUs, see [paragraph 1.3.7.8](#).

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1.3.6. The Unit Commander will:

1.3.6.1. Confer with the Office of the Staff Judge Advocate to determine appropriate actions.

1.3.6.2. Ensure Airmen and Guardians are informed of the right to consult with the servicing Area Defense Counsel.

1.3.6.3. Unless granting an extension, provide members three duty days to submit rebuttal documents in response to adverse administrative actions. Commanders will afford all Air Reserve Component members not in an active duty status 45 calendar days to submit rebuttal documents.

1.3.6.4. Review rebuttal responses for LOCs, LOAs and LORs, if submitted, and make final decisions.

1.3.6.5. If making the determination to place the action in a UIF, complete the DAF Form 1058, *Unfavorable Information File Actions*, and have the Airman or Guardian acknowledge receipt and understanding of the action(s) being taken.

1.3.6.6. Furnish all officer adverse information to the member's MPF, CSS, or equivalent personnel support function for inclusion in the MPerRGp and OSR.

1.3.6.7. Review the Force Support Squadron (FSS) audit and self-inspection checklist in [Attachment 2](#).

1.3.6.8. Appoint an Adverse Administrative Actions Manager in writing and forward the letter to the appropriate MPF within 30 calendar days of taking command.

1.3.6.9. Review all UIFs under their authority within 90 days for their permanent assumption or appointment to command.

1.3.6.10. Receive, review, and report demographic data of the issuer and recipient of all administrative actions for all individuals under their immediate command, in accordance with [paragraph 5.2](#).

1.3.7. The Commander's Support Staff will:

1.3.7.1. Manage the unit adverse administrative action program.

1.3.7.2. Update UIF Codes 1, 2, 3, and 4.

1.3.7.3. Utilize the Self-Inspection Checklist ([Attachment 2](#)) to manage the program.

1.3.7.4. Conduct a semi-annual audit to purge expired action(s) and destroy files upon expiration.

1.3.7.5. Review source documents such as LORs and Article 15s prior to updating UIF and control roster codes, maintain electronic or paper (if required) UIF case files and document entries.

1.3.7.6. Maintain unit PIF, as a minimum, for officers who received a LOA or LOC which are not filed in an officer's UIF.

1.3.7.7. Process unit administrative actions (for example, Records of Individual Counseling, LOCs, LOAs, LORs, or control roster actions).

1.3.7.8. For OSI CSS and GSUs only, provide appropriate notification to unit commander and installation judge advocates when Air Force Personnel Center confirms adverse information has been placed into a member's selection record.

1.3.8. Adverse Administrative Actions Managers comprise both Base-level Adverse Administrative Actions Manager(s) and Unit-level Adverse Administrative Actions Manager(s).

1.3.8.1. The Base-level Adverse Administrative Actions Manager(s) will:

1.3.8.1.1. Audit UIFs at least twice a year by comparing data in MilPDS to UIFs on file.

1.3.8.1.2. Sign the audit list or self-inspection checklist ([Attachment 2](#)) and file it in general correspondence.

1.3.8.1.3. Conduct unit training at least annually, within 60 days of notification of appointment of a new unit Adverse Administrative Actions Manager, upon request from a unit commander, or when needed.

1.3.8.1.4. Coordinate with the Office of the Staff Judge Advocate to ensure UIFs receive an annual legal review.

1.3.8.2. Unit-level Adverse Administrative Actions Manager(s) will:

1.3.8.2.1. Audit UIFs at least twice a year. Compare data in MilPDS to UIFs on file.

1.3.8.2.2. Sign the audit list or self-inspection checklist ([Attachment 2](#)) and file it in general correspondence.

1.3.9. Office of the Staff Judge Advocate will:

1.3.9.1. Conduct annual review of UIFs.

1.3.9.2. Provide a legal review when a UIF is established and when documents are added. The legal review does not need to be in writing.

1.3.9.3. Obtain a MAJCOM/FLDCOM memorandum on the applicability of the exception to the 10-year retention rule as outlined in [paragraph 1.2.4.1](#) and [paragraph 1.2.4.2](#). The memorandum will be included with the command action documents submitted to the MPF, CSS, or equivalent personnel support function for inclusion in the MPerRGp.

Chapter 2

ADMINISTRATIVE COUNSELING, ADMONISHMENT, AND REPRIMAND

2.1. Use of Administrative Counselings, Admonishments, and Reprimands. General officers, commanders, first sergeants, supervisors (military or civilian), and other individuals in the member's administrative or operational chain of command can issue administrative actions. This includes issuing administrative counseling, admonishment, and reprimands to Air Reserve Component (ARC) Airmen who commit an offense while in civilian status. In order to ensure consistency, units may utilize locally produced forms as long as the forms contain the same information as that in [Attachment 5](#), have been reviewed by their Office of the Staff Judge Advocate, and have been approved for use by the installation commander.

2.2. Standard of Proof. The Standard of Proof for adverse administrative actions is a "preponderance of the evidence." This standard will be used when evaluating the evidence and every element of the alleged offenses. **(T-1)**

2.2.1. A preponderance of the evidence merely means that it is more likely than not that a fact exists. Preponderance of the evidence is not determined solely by the volume of witnesses or documentary evidence supporting or refuting an allegation. Rather, it is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses.

2.2.2. Consider whether such proof is available before initiating the administrative action. If such proof is lacking, administrative action may be determined legally insufficient and, as a result, could be withdrawn. There is no requirement to prove any allegation beyond a reasonable doubt.

2.3. Verbal Counseling and Records of Individual Counseling. Commanders, first sergeants, supervisors, and other individuals in the member's administrative or operational chain of command will assist Airmen and Guardians in developing skills, attitudes, and behaviors that are consistent with DAF standards. Members of the administrative or operational chain of command will routinely counsel Airmen and Guardians either verbally or in writing. **(T-3)**

2.3.1. Verbal Counseling. A verbal counseling is the lowest level corrective tool. It is not required to formally record this type of counseling unless the issuer finds the Airman or Guardian failed to subsequently follow members of the administrative or operational chain of command's direction.

2.3.2. Record of Individual Counseling (RIC). The DAF Form 174, *Record of Individual Counseling*, is used document a verbal counseling session. It is used to document a record of positive or negative counseling and is useful when completing performance evaluations. It is the least severe form of written administrative actions.

2.3.3. Letter of Counseling (LOC). Administrative censure for violation of standards. The intended outcome of a LOC is to help Airmen and Guardians use good judgment, assume responsibility, understand and maintain standards, and face and solve problems. Generally, this is a form of corrective action appropriate for correcting habits or shortcomings not necessarily criminal or illegal, but which can ultimately affect job performance, work center morale, and discipline.

2.3.4. Letter of Admonishment (LOA). Administrative censure for violation of standards which is more severe than a RIC and LOC. It could be used to document a first offense or address behaviors not corrected through counseling. Do not use it when a reprimand is more appropriate.

2.3.5. Letter of Reprimand (LOR). Administrative censure for violation of standards which is more severe than a RIC, LOC, and LOA and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior.

2.3.5.1. For officers only: Only supervisors and members of the officer's current administrative or operational chain of command may issue a LOR to an officer. **(T-1)** If the person who issues the LOR is not the officer's unit commander, the person who issued the reprimand must send it to the administrative unit commander. **(T-1)** The administrative unit commander acknowledges and endorses the DAF Form 1058, establishing the UIF or, if the member has an existing UIF, adds the document to the member's UIF. **(T-1)** Include the member's written acknowledgment and any documents submitted by the member in response to the administrative action taken. **(T-2)** See [paragraph 1.2](#) and [Attachment 8](#) for filing adverse in the OSR.

2.3.5.2. The DAF Form 1058 does not need to be referred to the officer for a response because LORs for officers are mandatory UIF filings. The DAF Form 1058 is used only to obtain the commander's acknowledgment of the action (for LOR administered by personnel other than the commander) and to refer the LOR for file in the UIF. The LOR will also be filed in the MPerRGp and OSR. **(T-0)**

2.4. Administering Records of Individual Counseling, Letters of Counseling, Letters of Admonishment, or Letters of Reprimand.

2.4.1. For enlisted Airmen and Guardians: Issuing authorities, especially first-time supervisors, are encouraged to seek assistance from the supervisory chain, senior enlisted leader, first sergeant, and/or legal office prior to administering RICs, LOCs, LOAs, or LORs to the member.

2.4.2. Document a counseling, admonishment, or reprimand in writing. **(T-1)** Ensure each document includes:

2.4.2.1. The reasons for the action, including what the member did or failed to do, citing specific incidents and their dates. **(T-3)**. While citation to a specific Uniform Code of Military Justice or Air Force Instruction violation may provide clarity, it is not required.

2.4.2.2. Identify expected improvements to member, if appropriate.

2.4.2.3. Inform member that further deviation may result in more severe action. **(T-3)**

2.4.2.4. USSF, RegAF, Active Guard and Reserve (AGR), ARC statutory tour members, and ANG members in Title 10 active duty status will be allocated 3 duty days (current date plus 3 duty days) to acknowledge the intended actions and provide pertinent information before the issuing authority makes the final decision on the administrative action. **(T-2)** ARC members not in an active duty status, who depart the duty area prior to the 3 duty days allowed for acknowledging intended actions, have 45 calendar days from the date of receipt to acknowledge the intended actions and provide pertinent information before the issuing authority makes the final decision. **(T-2)** In calculating the time to respond, the date

of receipt is not counted, and if the individual mails their acknowledgment, the date of the postmark on the envelope will serve as the date of acknowledgment. **(T-1)** The individual is presumed to be in receipt of official correspondence if it is delivered by certified mail to the individual's address or best available address. See [Attachment 5](#) for the recommended format and required statements.

2.4.2.5. The member's written response will become part of the record. **(T-0)**

2.4.2.6. LOCs, LOAs, and LORs will include and list as attachments: relevant statements, portions of investigations, reports, and other documents that serve, in part or in whole, as the basis for the letter. **(T-2)** Redact Privacy Act material and Personally Identifiable Information and mark, "Controlled Unclassified Information." **(T-1)**

2.4.2.6.1. Documents released from investigations, reports, etc., should be accompanied by a cover memorandum indicating that the documents are "Controlled Unclassified Information" and specify any handling requirements (see [Attachment 4](#) for a sample memorandum). The issuer of a LOC, LOA, or LOR is not required to create statements or other documentary evidence that does not exist otherwise to support the basis of an adverse administrative action.

2.4.2.6.2. Documents should not be released to the member without authorization from the issuing authority. Release approval should be obtained before the letter is issued. When impractical to obtain release before the letter is issued, obtain such approval as soon as possible after service of the letter on the member but do not release the documents until approval is received.

2.4.2.7. Individual counseling sessions documented on DAF Form 174 do not require the issuer to provide the member written statements or other documentary evidence. However, the issuing authority may include such documents, if relevant.

2.4.3. The LOC, LOA, or LOR issuing authority, after considering any comments submitted by the individual, must inform the member within 3 duty days of their decision as to the final disposition of the action. **(T-2)** For ARC members not in an active duty status, the issuing authority has 45 calendar days from the date of personal delivery or date of receipt of the certified letter to reply to the member (see [Attachment 5](#) for a sample administrative letter).

2.4.4. Contents of Record. The record of the action consists of the finalized LOC, LOA, or LOR and written response thereto submitted by the member and/or the member's defense counsel. Additional materials submitted by the member in mitigation, extenuation, or defense are not part of the record. Evidence and any other written materials considered as a basis for imposing the administrative letter are not part of the record. **(T-1)**

2.4.5. Actions After Administering a RIC, LOC, LOA, or LOR.

2.4.5.1. The RIC, LOC, LOA, LOR issuing authority must send the finalized record to the member's commander or superiors for information, action, or for their approval to file in the member's UIF and PIF. **(T-1)** For officers, adverse information must be placed in the OSR in accordance with [paragraph 1.2](#) and [Attachment 8](#). **(T-0)** When forwarding the action to the member's commander, include the member's written acknowledgment and any documents submitted by the member; however, as provided in [paragraph 2.4.4](#), only the original action and the member's and/or member's defense counsel's written response

will become part of the record. **(T-1)** For officers, LORs must be filed in the UIF, and any RICs, LOCs, or LOAs not filed in the UIF must be filed in the officer's PIF. **(T-2)** LOCs related to a substantiated finding or conclusion from an officially documented investigation or inquiry, LOAs, and LORs, must be filed in the officer's MPerRGp and OSR in accordance with [paragraph 1.2](#) and [Attachment 8](#). **(T-0)**.

2.4.5.2. The issuing authorities for LOCs, LOAs, or LORs for a general officer or general officer select will forward the original document and attachments to Air Force General Officer Management (AF/A1LG), AFR Senior Leader Management (AF/REG) or the National Guard Bureau Senior Leader Management Office (NGB-SL) for distribution, as appropriate, to the member's commander. **(T-1)**

2.4.5.3. See AFI 90-301 for processing requirements associated with command actions taken against officers.

2.4.6. Rescinding RIC, LOC, LOA, or LOR documents contained in a PIF or a UIF. Subject to the criteria in [paragraph 2.4.6.1](#) and limitations in [paragraph 2.4.6.2](#) and [paragraph 2.4.6.3](#), the individuals listed in [paragraph 2.1](#) and [paragraph 4.4.1](#) through [paragraph 4.4.6](#) of this instruction, if equal to or senior in grade to the initial imposing authority, may rescind RICs, LOCs, LOAs or LORs upon those individuals own initiative or upon a request from the member if the member is within their command. For example, if an E-7 issues a LOR to a subordinate E-3, the E-3 petitions the squadron commander to rescind the LOR.

2.4.6.1. These individuals may rescind RICs, LOCs, LOAs, or LORs only in the following circumstances:

2.4.6.1.1. In the rare situation in which new evidence shows, by a preponderance of the evidence, that the member did not commit the act underlying the original administrative action;

2.4.6.1.2. If the issuing authority issued the administrative action in a way that violated the member's due process rights; or

2.4.6.1.3. If the appropriate authority determines more or less severe action is warranted.

2.4.6.2. RICs, LOCs, LOAs, or LORs contained in UIFs.

2.4.6.2.1. For enlisted, the member's current unit commander or individuals listed in paragraphs [2.1](#) and [4.4.1](#) through [4.4.6](#) in the current chain of command and equal or senior in grade to the initial imposing authority, may rescind RICs, LOCs, LOAs, or LORs in the member's UIF.

2.4.6.2.2. For officers, the member's current wing/delta commander, or individuals listed in [paragraph 2.1](#) and [paragraph 4.4.1](#) through [paragraph 4.4.6](#) in the current chain of command and equal or senior in grade to the initial imposing authority, may only rescind RICs and standalone LOCs (see [paragraph 1.2.2](#)) contained in the officer's UIF.

2.4.6.3. RICs, LOCs, LOAs, or LORs contained in PIFs.

2.4.6.3.1. For enlisted, the member's current unit commander or individuals listed in [paragraph 2.1](#) and [paragraph 4.4.1](#) through [paragraph 4.4.6](#) in the current chain of command and equal or senior in grade to the initial imposing authority, may rescind RICs, LOCs, LOAs, or LORs in the member's PIF.

2.4.6.3.2. For officers, the member's current unit commander or individuals listed in [paragraph 2.1](#) and [paragraph 4.4.1](#) through [paragraph 4.4.6](#) in the current chain of command and equal or senior in grade to the initial imposing authority may only rescind RICs and standalone LOCs (see [paragraph 1.2.2](#)) contained in the officer's PIF.

2.4.6.3.3. Rescinding a RIC, LOC, LOA, or LOR removes the rescinded action from the UIF or PIF. However, it does not automatically remove it from historical documents or actions collaterally impacted by the rescinded document, such as a referral Officer or Enlisted Performance Report or promotion withhold. Airmen and Guardians seeking relief from the collateral consequences of a later-rescinded administrative action must apply to the appropriate forum, to include, for example, the AFBCMR. **(T-1)**

2.4.6.3.4. For officers only, if previously reported, commanders or civilian equivalents must report rescission of such documents to SAF/IGQ or Secretary of the Air Force, Office of the Inspector General, Senior Official Inquiries (SAF/IGS). **(T-1) For ANG only:** If a member in Title 10 status receives an adverse administrative action while on Title 10 orders from a Title 10 superior, and then returns to Title 32 status, the member's Title 32 superior with authority to rescind any adverse action may not do so without coordinating the action with the imposing Title 10 commander and sending the proper rescission to the 201st Mission Support Squadron. **(T-1)**

2.4.6.4. RICs, LOCs, LOAs, or LORs no longer contained in a PIF or UIF. Records contained in other Department of the Air Force records systems, not a unit PIF or UIF (e.g., MPerRGp, OSR, SOUIF), may not be rescinded by a commander or civilian director. Members, who believe they have suffered an error or injustice, may apply to the AFBCMR to have their records of RICs, LOCs, LOAs, or LORs removed from other Department of the Air Force records systems.

Chapter 3

UNFAVORABLE INFORMATION FILE (UIF)

3.1. UIF Authorities to Establish, Destroy or Remove. UIFs may be established, destroyed, or removed by the following individuals:

3.1.1. Commanders and equivalent civilian directors at all levels. Commanders must be on G-series orders and senior to the member. **(T-1)**

3.1.2. The commander, deputy commander, staff director and directors at MAJCOM/FLDCOM or MAJCOM/FLDCOM commander directed designee, field operating agencies, and direct reporting units and The Adjutant General (TAG), Commanding General, or directed designee at the applicable State, District, or Territory Headquarters for Title 32 members.

3.1.3. Chief of Staff, Chief of Space Operations, Vice Chief of Staff, Vice Chief of Space Operations, Assistant Vice Chief of Staff, Space Force Director of Staff, deputy chiefs of staff, deputy chiefs of space operations, assistant chiefs of staff, assistant chiefs of space operations, other heads, and directors (military or civilian) of deputy chiefs of staff and chiefs of space operations or other staff agencies.

3.1.4. Civilian leaders and military officers in positions comparable to those listed in [paragraph 3.1.3](#) within the Office of the Secretary of the Air Force (SAF), Office of the Joint Chiefs of Staff, and Office of the Secretary of Defense.

3.1.5. The senior Air Force or Space Force officer assigned to a joint command.

3.1.6. The HQ RIO Detachment Commanders for Civil Air Patrol Reserve Assistance Program and the Admissions Liaison Officer Program.

3.1.7. When a commander in a joint command, assigned to a different service, imposes nonjudicial punishment on an Air Force or Space Force enlisted member, the senior Air Force or Space Force officer or commander must decide whether to establish a UIF (see AFI 51-202, *Nonjudicial Punishment*). **(T-1)**

3.1.7.1. If the senior Air Force or Space Force officer or commander of the enlisted member's element is not available or is junior to the commander who imposed the punishment, the General Court-Martial Convening Authority of the Air Force or Space Force host command decides whether to establish a UIF.

3.1.7.2. If the Air Force or Space Force host command does not have a General Court-Martial Convening Authority who is senior to the commander who imposed punishment, the Air Force or Space Force host command's MAJCOM/FLDCOM commander will designate an Air Force or Space Force General Court-Martial Convening Authority senior to the commander who imposed punishment to decide whether to establish a UIF. **(T-1)**

3.2. Initiating a UIF. The appropriate UIF authority initiates a UIF by referring applicable documents to the member using a DAF Form 1058. **(T-1)**

3.2.1. Officer UIFs. Optional documents (LOA and LOC) for officers are referred to the offending member with a DAF Form 1058 before establishing a UIF. For mandatory documents (Article 15s, LOR, court-martial or civilian court convictions), the DAF Form 1058

does not need to be referred to the officer for a response. Should a member be issued an AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officer)*, (for ANG use AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (Officer) – Air National Guard Only*) then a DAF Form 1058 is not required because the UIF is established with the AF Form 3070C/E alone.

3.2.2. Enlisted UIFs. The appropriate UIF authority refers optional documents (LOAs, LOCs, or LORs) to the offending member using a DAF Form 1058 before establishing a UIF. Do not use a DAF Form 1058 if an optional Article 15 is filed in the UIF. For mandatory documents (Article 15s with punishment exceeding 1 month [31 days or more], court-martial or civilian court convictions) the DAF Form 1058 does not need to be referred to the enlisted member for a response. If a member is issued an AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru SSgt)*/AF Form 3070B, *Record on Nonjudicial Punishment Proceedings (TSgt thru CMSgt)*, then a DAF Form 1058 is not required because the UIF is established with the AF Form 3070A/B/D alone. **Note:** DAFI 36-2608, *Military Personnel Records Systems*, provides procedures for Senior Noncommissioned Officer Selection Record determinations for enlisted members who receive an LOR.

3.2.3. Notifying ARC Members Not in a Duty Status of UIF action. The appropriate UIF authority may refer documents they intend to file in the UIF to the member in person or by certified letter.

3.2.4. Members will be allocated 3 duty days to acknowledge the intended actions and provide pertinent information before the commander makes the final decision on placing optional documents in the UIF. **(T-1)** ARC members not in active duty status, who depart the duty area prior to the 3 duty days allowed for acknowledging intended actions, will have 45 calendar days from the date of receipt to acknowledge the notification, intended actions, and provide pertinent information before the issuing authority makes the final decision. **(T-1)** In calculating the time to respond, the date of receipt is not counted, and if the individual mails their acknowledgment, the date of the postmark on the envelope will serve as the date of acknowledgment. **(T-1)** The individual is presumed to be in receipt of official correspondence if it is delivered by certified mail to the individual's address or the address included in Defense Enrollment Eligibility Reporting System. **(T-1)**

3.2.4.1. The commander ensures the Airman or Guardian is notified of the final decision. **(T-1)** For ARC members not in a duty status, this may be accomplished in person or by certified mail.

3.2.4.2. The commander forwards copies of adverse administrative actions, LORs, DAF Forms 1137, *Unfavorable Information File Summary*, and DAF Form 1058:

3.2.4.2.1. For USSF and RegAF general officers and general officer selects to the Air Force or Space Force General Officer Management (SF/S1LG or AF/A1LG) at SF/S1LG or AF/A1LG, 1040 Air Force Pentagon, Washington, DC 20330-1140. **(T-1)**

3.2.4.2.2. For USSF and RegAF colonels and colonel selects to the Air Force or Space Force Colonel Management Office (SF/S1LO or AF/A1LO) at SF/S1LO or AF/A1LO, 1040 Air Force Pentagon, Washington, DC 20330-1140. **(T-1)**

- 3.2.4.2.3. For USSF and RegAF chief master sergeants (CMSgts) and CMSgt selects to the Chief Master Sergeant Management Office (SF/S1LE or AF/A1LE) at SF/S1LE or AF/A1LE, 1040 Air Force Pentagon, Washington, DC 20330-1140. **(T-1)**
- 3.2.4.2.4. For AFR general officers and general officer selects to AF/REG, 1150 Air Force Pentagon, Washington, DC 20330-1150. **(T-1)**
- 3.2.4.2.5. For AFR colonels and colonel selects to AF/REG, 1150 Air Force Pentagon, Washington, DC 20330-1150. **(T-1)**
- 3.2.4.2.6. For AFR CMSgts and CMSgt selects to AF/REG Senior Enlisted Management, 1150 Air Force Pentagon, Washington, DC 20330-1150. **(T-1)**
- 3.2.4.2.7. For ANG general officers and colonels with or pending a certificate of eligibility, send to NGB-SL, 111 South George Mason Drive, Arlington, VA 22204-1373. **(T-1)**
- 3.2.4.2.8. For ANG statutory tour members, send to the National Guard Bureau Human Resources Office (NGB/HR), 3501 Fetchet Ave, Joint Base Andrews, MD 20762-5157. **(T-1)**
- 3.2.4.2.9. For ANG members route documents to the applicable CSS or servicing FSS. **(T-1)**
- 3.2.4.3. For general officers and general officer selects. A commander's decision to place adverse information in a UIF is unrelated to the SAF's decision to place this information in a SOUIF. Commanders will forward copies of all adverse information to Secretary of the Air Force, Office of the Inspector General (SAF/IG), 1140 Air Force Pentagon, Washington D.C. 20330, in accordance with AFI 90-301. See [paragraph 3.11](#).
- 3.2.4.4. For officers in the grade of colonel and below: Send a copy of the initial and updated DAF Form 1137 to the officer's servicing and gaining MAJCOM/FLDCOM. Consult with the servicing Staff Judge Advocate to determine if the information should be forwarded to SAF/IGQ in accordance with AFI 90-301.
- 3.2.4.5. For all Individual Reservists, send a copy of the initial and any updated DAF Forms 1058 to the HQ RIO Detachment and Air Reserve Personnel Center, Total Force Services – Directorate of Personnel & Total Force Services (ARPC/DPT).
- 3.2.4.6. For Air Force Reservists in Personnel Accounting Symbol (PAS) S7XXXXXX (Non-participating, Stand-by and Inactive AFR status), send a copy of the initial and any updated DAF Forms 1058 to Air Reserve Personnel Center, Reserve Services Program, Directorate of Assignments, Reserve Service Programs (ARPC/DPAMR).

3.3. Processing Actions in Establishing or Maintaining a UIF.

3.3.1. The Adverse Administrative Actions Manager will receive documents from the unit commander, base Staff Judge Advocate, Equal Opportunity Director or substance abuse clinic. **(T-1)** Some documents require mandatory establishment of a UIF while others are at the commander's discretion. Refer to [Table 3.2](#) to determine whether the UIF establishing authority is required to file the following documents in the member's UIF or whether filing the documents in the UIF is optional. If not already established, create a UIF folder and a DAF

Form 1137. Then, refer the documents to the servicing Office of the Staff Judge Advocate for a legal review (see [Attachment 3](#)). (T-1)

3.3.2. The commander ensures the UIF contains only substantiated unfavorable information about events that occurred. The Commander, Air Reserve Personnel Center (ARPC/CC) will be the establishing authority for Reservists in PAS S7XXXXXX (Non-participating, Stand-by and Inactive AFR status). (T-1)

3.3.3. If the UIF establishing authority decides not to file an administrative action in a UIF when issued, the UIF establishing authority may elect to file the administrative action in a UIF within 6 months of issuing the action. Within the six-month window, the UIF establishing authority may file the administrative action in an existing UIF, or in a newly established UIF. The decision must be properly documented in accordance with [paragraph 3.3.1](#) of this instruction. (T-1)

3.3.4. Mark the UIF folder with the individual's name on the front and CONTROLLED UNCLASSIFIED INFORMATION on the front and back. (T-2)

3.3.5. If the member is performing or selected for assignment to Personnel Reliability Program duties or is a student attending a Personnel Reliability Program-related course as defined by Department of Defense Manual (DoDM) 5210.42_Air Force Manual (AFMAN) 13-501, *Nuclear Weapons Personnel Reliability Program*, mark the folder in the upper right hand corner reflecting the member's assignment to Personnel Reliability Program. The Personnel Reliability Program marking must be visible when the folder is closed and filed. (T-2)

3.3.6. Prepare a DAF Form 1137 for each UIF summarizing the incident, the disposition date, the commander's evaluation of the incident, and what administrative action was taken. Be specific. Ensure the commander, First Sergeant, or Unit Adverse Administrative Actions Manager sign each entry on the DAF Form 1137. (T-1)

3.3.7. Remove the DAF Form 1137 entry when a portion of the supporting documents are removed, as appropriate; the original DAF Form 1137 remains in the UIF. (T-1)

3.3.8. Coordinate and distribute the DAF Form 1137 as appropriate. When distributing a DAF Form 1137 for an Individual Reservist, forward one copy to the HQ RIO Detachment. For ANG members, distribute to the Military Personnel Management Office at the appropriate State Headquarters (see [Table 3.3](#)). (T-1)

3.3.9. Update MilPDS in accordance with [Table 3.2](#) when a commander establishes a UIF or adds or removes documents from a member's UIF. (T-1)

3.3.10. File any documents provided by the Airman or Guardian in response to an administrative action in the UIF. See [paragraph 2.4.4](#) for contents of a record. Article 15 supporting documentation, such as evidence or other written materials (with exception of the member's response to the Article 15 action) considered as a basis for imposing punishment; vacating a suspended punishment; or submitted by the member in mitigation, extenuation, defense or an appeal is not part of the record. (T-1) File these materials at the servicing Office of the Staff Judge Advocate of the commander who initiated the Article 15 as attachments to that office's copy of the action. (T-1)

3.4. Removal of UIFs.

3.4.1. The UIF and all of its contents are maintained until the final disposition date unless early removal of the UIF or document(s) is clearly warranted. UIF establishing authorities initiate removal action via DAF Form 1058 or memorandum, and notify the member. An officer's current wing or delta commander (or equivalent), or UIF establishing authority (if still in the member's chain-of-command), whichever is higher, may remove a UIF or individual entries. For enlisted members, the unit commander (or civilian equivalent) or higher authority may remove a UIF or individual entries.

3.4.2. UIF establishing authorities may initiate early removal action for adverse administrative actions in the following circumstances:

3.4.2.1. When nonjudicial punishment under Article 15 is set aside or a civilian conviction is overturned.

3.4.2.2. When the UIF establishing authority, after consulting with the servicing Staff Judge Advocate and reviewing the member's rebuttal, determines by a preponderance of the evidence that an enlisted member did not commit the offense listed in LOC, LOA, or LOR or the officer member did not commit the offense in a RIC or standalone LOC.

3.4.2.3. Upon completion of punishment resulting from a court-martial or Article 15. For courts-martial, only the court-martial convening authority may remove documents early. **(T-2)**

3.4.2.4. Officer UIFs may be removed early if the following document(s) used to establish the UIF are removed:

3.4.2.4.1. Court-Martial Order or Entry of Judgement. The removal authority is the member's current wing or delta commander (or equivalent) or convening authority, whichever is higher, and the punishment must be completed prior to early removal. **(T-1)**

3.4.2.4.2. Article 15. The removal authority is the member's current wing or delta commander (or equivalent) or imposing commander, whichever is higher, and the punishment must be completed prior to early removal. **(T-1)**

3.4.2.4.3. LOC, LOA, LOR, or control roster placement. The removal authority is the member's current wing or delta commander (or equivalent) or issuing authority, whichever is higher. **(T-1)**

3.4.2.4.4. UIF removal procedures outlined for officers in [paragraph 3.4.2.4](#) through [paragraph 3.4.2.4.3](#) do not affect items required to be placed in the officer selection record required by law. **(T-0)**

3.4.3. Early removal of all other UIF entries. Early removal is discretionary with the UIF establishing authority. Wing commanders, delta commanders, or issuing authorities can no longer direct removal of derogatory data from the OSR as previously permissible in this instruction and DAFI 36-2608. **(T-0)**

3.4.4. To remove the UIF or UIF documents prior to the final disposition date:

3.4.4.1. Destroy the UIF or UIF document and update MilPDS.

3.4.4.2. Sanitize the DAF Form 1137 by redacting, erasing, whitening or blacking out comments pertaining to the removed document. For Individual Reservists, forward a copy of DAF Form 1137 to the HQ RIO Detachment.

3.4.4.3. Coordinate the updated DAF Form 1137 in accordance with [Table 3.3](#) when other documents remain in the UIF.

3.4.4.4. File DAF Form 1058 in the digital file plan if no further documents exist in the UIF. Send a copy of the DAF Form 1058 to:

3.4.4.4.1. SF/S1LG (USSF) or AF/A1LG (RegAF) for general officers and general officer selects.

3.4.4.4.2. SF/S1LO (USSF) or AF/A1LO (RegAF) for colonels and colonel selects.

3.4.4.4.3. SF/S1LE (USSF) or AF/A1LE (RegAF) for CMSgts and CMSgt selects.

3.4.4.4.4. AF/REG for AFR general officers, colonels, and colonel selects.

3.4.4.4.5. AF/REG, Senior Enlisted Management, for AFR CMSgts and CMSgt selects.

3.4.4.4.6. The member's servicing FSS for Non-Extended Active Duty members.

3.4.4.4.7. ARPC/DPT for all Individual Reservists Lt Col and below.

3.4.4.4.8. NGB-SL for ANG general officers and colonels with or pending a certificate of eligibility.

3.4.4.4.9. NGB/HR for ANG statutory tour members.

3.4.4.5. For Reservists in PAS S7XXXXXX (non-participating, stand-by and inactive AFR status), send a copy of the DAF Form 1058 and adjusted DAF Form 1137 to ARPC/DPAMR.

3.4.4.6. For ANG Drill Status Guardsmen, send a copy of the DAF Form 1058 and adjusted DAF Form 1137 to the member's servicing FSS.

3.4.5. UIF establishing authorities are prohibited from removing any documents or adjusting disposition dates for Article 15 actions or courts-martial before punishment, sentence, judgment, or action is complete (For example: If an Article 15 punishment calls for 45 days extra duty or the punishment is suspended for 5 months, the Article 15 cannot be removed from an individual's UIF until the 45 days extra duty is performed or the suspension is complete or remitted). (T-0)

3.5. Transferring and Disposing of UIFs. When releasing UIF information through the mail do not use Standard Forms 65B or 65C, *U.S. Government Messenger Envelopes*. The Adverse Administrative Actions Manager marks the front and back of the envelope containing UIF information CONTROLLED UNCLASSIFIED INFORMATION. (T-1)

3.5.1. See [Table 3.3](#) for when and how to dispose of UIFs. Unexpired UIFs are transferred between the USSF, RegAF, ANG, and AFR components on all personnel (officer and enlisted) separating or transferring between the USSF, RegAF, AFR, or ANG member.

3.5.2. For Temporary Duty (TDY) en route to a Permanent Change of Station (PCS). The TDY commander sends a completed copy of DAF Forms 1058 and 1137 and the individual's PCS special orders to the gaining MPF after each UIF entry. If the individual's eligibility or suitability for the pending assignment is in doubt, the gaining commander contacts the MPF for guidance. If the individual is on TDY and will return to their permanent unit, the TDY commander sends the completed package to the individual's unit commander.

3.5.3. If the individual is absent without leave or in deserter status before or on the UIF expiration date, the UIF establishing authority notifies the Adverse Administrative Actions Manager in writing of the individual's status. The notification letter serves as a source document for MilPDS update. The Adverse Administrative Actions Manager retains the UIF and updates the UIF disposition date to "8 Aug 3888" (indefinite). Do not annotate the DAF Form 1137 (see [Table 3.3](#)). If the individual returns from Absent Without Leave or deserter status, the unit commander advises the Adverse Administrative Actions Manager to destroy the UIF or establishes a new UIF disposition date. This date is no more than 3 months from the date the commander signs the UIF notice advising the Adverse Administrative Actions Manager of the member's change in status. If a document is added to the UIF before the end of the 3 months, the UIF disposition date is extended. If a document is not added, the UIF is destroyed at the end of the 3 months. See [Table 3.3](#). (T-1)

3.5.4. The Adverse Administrative Actions Manager maintains the UIF for members in dropped-from-rolls status (see [Attachment 1](#)). When the UIF expires, the manager annotates the DAF Form 1137 to show the date the member entered dropped-from-rolls status, has it signed by the commander, and forwards it to the MPF. If the member is returned to duty at a later date, the unit commander advises the Adverse Administrative Actions Manager to destroy the UIF or establishes a new UIF disposition date. This date is no more than 3 months from the date the commander signs the UIF notice advising the Adverse Administrative Actions Manager of the member's change in status. If documentation of adverse action is added to the UIF before the end of the 3 months, the UIF disposition date is extended. If no other documents are added, the file is destroyed at the end of the 3 months. See [Table 3.3](#). (T-1)

3.6. Updating UIF Documents.

3.6.1. The Unit Adverse Administrative Actions Manager will update UIF codes 1, 2, and 3 in MilPDS. (T-1)

3.6.2. The MPF will manage the adverse administrative actions for units without a CSS. (T-1)

3.7. Accessing UIFs.

3.7.1. The Adverse Administrative Actions Manager ensures access to UIFs is limited to:

3.7.1.1. The member who has the UIF.

3.7.1.2. Individuals listed in [paragraph 3.1](#) reviewing UIFs on personnel assigned or attached to their command.

3.7.1.3. First Sergeants reviewing UIFs on enlisted members assigned or attached to their units.

3.7.1.4. Performance report rating officials, when preparing to write or endorse an Officer or Enlisted Performance Report, Promotion Recommendation Form, or recommending an enlisted member for reenlistment.

3.7.1.5. The senior Air Force or Space Force officer or commander of an Air Force or Space Force element in a joint command reviewing UIFs on individuals in the element.

3.7.1.6. The Air Force or Space Force element section commander in a joint command reviewing UIFs on enlisted personnel. The section commander must have written approval from the senior Air Force or Space Force officer or commander of the element to review UIFs on the element's officers. **(T-3)**

3.7.1.7. MPF personnel, inspector general, inspection team members, judge advocates, paralegals, Office of Special Investigations personnel, Security Forces, other investigators, Military Equal Opportunity personnel, and substance abuse counselors in the course of their official Air Force duties. These personnel must obtain authorization from the member's commander prior to accessing the UIF; this includes the legal office performing the annual review as stated in [paragraph 1.3.9](#). **(T-3)**

3.7.1.8. HQ RIO Detachment Commander for AFR Individual Reservists.

3.7.1.9. NGB/HR and the RegAF servicing FSS for ANG statutory tour members, NGB-SL for general officers and colonels with or pending a certificate of eligibility, and servicing FSS for all other ANG members.

3.7.2. SF/S1LG or AF/A1LG will resolve questions regarding access to UIFs on USSF or RegAF general officers and general officer selects. **(T-2)**

3.7.3. NGB-SL will resolve questions regarding access to UIFs on ANG general officers and colonels with or pending a certificate of eligibility. **(T-2)**

3.7.4. AF/REG will resolve questions regarding access to UIFs on AFR general officers, colonels in general officer billets, and colonels. **(T-2)**

3.7.5. AF/REG, Senior Enlisted Management will resolve questions regarding access to UIFs on AFR CMSgts and CMSgt selects. **(T-2)**

3.8. Reviewing UIFs.

3.8.1. At a minimum, unit commanders, senior Air Force or Space Force officers or commanders of an Air Force or Space Force element in a joint command, will review all UIFs under their authority within 90 calendar days of their permanent assumption or appointment to command. **(T-2)** The commander will sign the review (see [Attachment 3](#)). **(T-2)** Geographically Separated Unit commanders use a computer listing of UIFs to acknowledge existence of UIFs. After the review is complete, the Geographically Separated Unit commander signs the list and files it in the general correspondence file. **(T-2)**

3.8.2. Review when individuals are considered for promotion, reenlistment, permanent change of station and/or assignment, retraining, reclassification, selective continuation or reenlistment, Personnel Reliability Program, or a specified period of time contract.

3.8.2.1. Review prior to completion of performance reports. **Note:** When an officer is convicted by a court-martial, comments are mandatory on the next Officer Performance Report (the Officer Performance Report must be a Referral Report) and the next Promotion Recommendation Form for below and in-the-promotion-zone consideration. **(T-1)** Comments on Officer Performance Reports and Enlisted Performance Reports relating to Article 15 punishment and control roster actions are strongly recommended for officers and senior non-commissioned officers, and must be considered in all cases. **(T-1)**

3.8.2.2. AFR or ANG: Review when considering applications for in-residence developmental education or short courses and all AFR assignments.

3.8.2.3. AFR or ANG: Review when considering a statutory tour assignment, AGR assignment, or when a member is being considered for an active duty tour exceeding 30 calendar days.

3.8.2.4. Review when considering an appointment or enlistment in a different component of the Air Force or Space Force.

3.9. Commander's Management Roster. Listings of personnel assigned within the unit possessing a quality indicator (e.g., UIF, control roster, Article 15). It also lists personnel possessing Enlisted Performance Report ratings which might indicate observation of their performance is warranted. The rosters can be retrieved for USSF or RegAF members from the Base Level Service Delivery Module dashboard and no certification or suspense of either roster is required. For ANG members, FSSs can utilize Command Human Resources Intelligence System or Oracle Business Intelligence Enterprise Edition® to retrieve pertinent listings. All entries should be reviewed to ensure appropriate action was taken. This includes determining appropriateness of an upcoming promotion, qualification for Personnel Reliability Program duties, assignment, reenlistment, etc., some of which are identified under the "projected for" area.

3.10. Making Recommendations to the Commander. The adverse action issuing authority (when not the commander or director), the Office of the Staff Judge Advocate, or the MPF Chief may recommend action to the commander. Use the DAF Form 1058 or memorandum and file it in the individual's UIF along with the commander's reply. DAF Form 1137 is not required to be annotated.

3.11. UIFs on General Officers and General Officer Selects. SF/S1LG, AF/A1LG, AF/REG and NGB-SL function as the sole Adverse Administrative Actions Manager and repository and maintain the original UIF. Copies of general officer and general officer select UIFs will not be maintained at or by any organization other than SF/S1LG for USSF officers, AF/A1LG for RegAF officers, AF/REG for AFR officers, or NGB-SL for ANG officers. **(T-1)** UIF information will not be updated in MilPDS for general officer or general officer selects. **(T-1)**

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Table 3.1. Adverse Administrative Actions Manager for AFR and ANG.

R U L E	A	B
	Reservist or Guardsman assigned to:	Adverse Administrative Actions Manager will be:
1	PAS S7XXXXXX	ARPC/DPAMR
2	Selective Service, Ready Reinforcement Personnel Section, and Individual Reservist	ARPC/DPT, RegAF Force Management or HQ RIO Detachment Commander
3	Non-Affiliated Reserve Section	ARPC/DPAMR
4	Central Managers (Chaplain/Judge Advocate/Surgeon General)	Unit of Attachment
5	AGR	Unit of Assignment
6	AFR and ANG Unit	Unit of Assignment
7	MAJCOMs/FLDCOMs	Unit of Assignment
8	Air Force Elements	Unit of Assignment
9	Health Professionals Scholarship Program and Chaplain Candidates	ARPC/DPAMR
10	ANG Statutory Tour Program	NGB/HR
11	ANG General Officers	NGB-SL
12	201st Mission Support Squadron (ANG of the United States (ANGUS) members	Either unit of attachment for training or operational support if capable of supporting or member's Title 32 home station with consent of the unit commander. (see Note)

Note: 201 MSS delegates the establishment of UIFs for Title 10 adverse actions to the ANGUS member's home station when the action cannot otherwise be supported by the unit of attachment. Home station unit commander should approve the establishment of UIFs if due to a transfer request by a Title 10 Adverse Administrative Actions Manager at the conclusion of an ANGUS member's activation or if requested by a Title 10 commander for an adverse action against an ANGUS member on a Title 10 active duty operational support tour. Home station unit commanders will consult with the 201 MSS before denying a Title 10 commander's request to establish a UIF. (T-1)

Table 3.2. Unfavorable Information File Establishment and Military Personnel Data System Update Procedures (Officer and Enlisted).

Rule	Document	Received From	Code/Disposition <i>(Subtract 1 day on all disposition dates – with the exception of interim)</i>	Filing	Notes
1	<p>Article 15: - Punishment or suspension 31 days or more - Suspended or unsuspended</p> <p>Court Martial Conviction</p> <p>Civilian Court Conviction: - Foreign or Domestic - Includes pending charges with sentence of more than 1 year, or death)</p>	Office of the Staff Judge Advocate, Commander, and/or First Sergeant	<p>(INTERIM – Code 3) Date punishment/suspension is complete not to exceed:</p> <p>Enlisted: 2 years from date sentence adjudged</p> <p>Officers: 4 years from date sentence adjudged</p> <p>(FINAL – Code 1) Upon completion of INTERIM and</p> <p>Enlisted: 2 years from date <input type="checkbox"/> <input type="checkbox"/> Commander signs item 4 of AF Form 3070, <i>Record of Nonjudicial Punishment Proceedings</i> (Article 15 Only) <input type="checkbox"/> <input type="checkbox"/> Sentence adjudged</p> <p>Officers: 4 years from date <input type="checkbox"/> <input type="checkbox"/> Commander signs item 4 of AF Form 3070 (Article 15 Only) <input type="checkbox"/> <input type="checkbox"/> Sentence adjudged</p>	Mandatory	1, 2, 3, 4, 5, 9
2	Control Roster	Commander	<p>(INTERIM – Code 2) 6 months from date the commander signs Section V of DAF Form 1058</p> <p>(FINAL – Code 1) Upon completion of INTERIM and 1 year from date the commander signs Section V of DAF Form 1058</p>	Mandatory	6, 9
3	Civilian Court Conviction:	Office of the Staff Judge Advocate,	<p>(FINAL – Code 1) Date punishment is due to be completed or 1 year from</p>	Mandatory	2

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	- Foreign or Domestic - Sentence of 1 year or less Substantiated allegations of: - Unlawful discrimination - Sexual harassment	Commander and/or First Sergeant	approval of commander directed investigation, whichever is earlier.		
4	LOC/LOA/LOR	UIF establishing authority	(FINAL – Code 1) <hr/> Enlisted: 1 year from date the commander signs section V of DAF Form 1058 <hr/> <hr/> Officer: 2 years from date the commander signs section V of DAF Form 1058 <hr/>	Mandatory for Officer LOR	7, 8
5	Other documents containing adverse information not referred using a DAF Form 1058	UIF establishing authority	N/A	Optional	8

Note:

1. Also applies to Article 15 punishment imposed on an Air Force or Space Force member of a joint command by a commander of a different service when processed in accordance with DAFI 51-202. Includes any suspended punishment longer than a month (31 days or more). Air Force Reserve Command (AFRC), ARPC, HQ RIO or The Adjutant General may establish longer observation periods, not to exceed 12 months for AFR or ANG personnel, if deemed appropriate.

2. If mandatory for file, the Staff Judge Advocate sends the record and determination directly to the servicing CSS (or MPF in lieu of) with a copy to the member's commander for action.

3. If the Article 15 punishment is a Reprimand only, then INTERIM disposition does not apply. Update record in accordance with FINAL disposition.

4. A record of suspended punishment under Article 15, or unsuspended Article 15 punishment, which is 30 days or less. Commanders may establish UIF in the same manner as rule 1.

5. UIFs are mandatory for officers who receive punishment under Article 15, which is noted in item 9 of the AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officer)*. This is true regardless of whether or not the punishment is suspended.

6. HQ AFRC, ARPC, HQ RIO, or The Adjutant General may establish longer observation periods, not to exceed 12 months for AFR or ANG personnel, if deemed appropriate.

7. If there are more than 14 calendar days between the date the UIF establishing authority signed the DAF Form 1058 and the date of the LOR/LOA/LOC, annotate the discrepancy in a Memorandum for Record and use the date of the LOR/LOA/LOC when determining the disposition date. File the Memorandum For Record in the UIF with the DAF Form 1058.

8. If it is not mandatory to establish a UIF, the UIF establishing authority still has the discretion and authority to establish a UIF with the instrument or record in question.

9. Subtraction of one day does not apply to interim dates.

Table 3.3. Annotating and Disposing of UIF Summary (DAF Form 1137).

Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
1	Documents for file in the UIF according to Table 3.2.	Prepares or updates the UIF summary to record and summarize the incident, files the document in the UIF, and updates system	Gives copy of DAF Form 1137 to member's unit UIF establishing authority. When necessary, coordinate with Personnel Reliability Program monitor and send a copy of initial and updated DAF Form 1137 to officers' servicing/gaining A1 or S1 (For unit Reservist to Air Force Reserve Command and for individual Reservist to the HQ RIO Detachment). For ANG send to the member's servicing CSS or FSS	Sends an additional copy of DAF Form 1137 to the appropriate office for medical, dental, chaplain, legal officers in the grade of colonel and colonel select (for AFR and ANG officers in the grade of colonel and colonel select, see paragraph 3.2.4.2.3 and 3.2.4.2.6). Send an additional copy to the appropriate state office (State Headquarters/Military Personnel Management Office)

Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
2	An approved or pending involuntary separation action, including an approved period of probation and rehabilitation under DAFI 36-3211, <i>Military Separations</i> . For AFR and ANG personnel reference DAFI 36-3211.	Annotates the original DAF Form 1137 Involuntary Discharge initiated under DAFI 36-3211, <i>Military Separations</i> . For AFR and ANG personnel: probation of member with lengthy service granted under DAFI 36-3211 (see note 1)	Gives copy of DAF Form 1137 to member's unit UIF establishing authority. When necessary, coordinate with Personnel Reliability Program monitor and send a copy of initial and updated DAF Form 1137 to officers' servicing/gaining A1 or S1 (For unit Reservist to Air Force Reserve Command and for individual Reservist to the HQ RIO Detachment). For ANG send to the member's servicing CSS or FSS	Sends an additional copy of DAF Form 1137 to the appropriate office as noted in paragraph 3.2.4.2 (for AFR and ANG officers in the grade of colonel and colonel select, see paragraph 3.2.4.2.3 and 3.2.4.2.6). Send an additional copy to the appropriate state office (State Headquarters/Military Personnel Management Office)
3	A notice to send a copy of a DAF Form 1137 for pending PCS (see notes 2,3, and 11)	Mails two copies of the notice and DAF Form 1137 to the gaining unit	The gaining FSS sends a copy of notice & DAF Form 1137 to the gaining CC. The remaining copies are retained in FSS pending receipt of the UIF	The gaining commander reviews the DAF Form 1137 and files
4	A notice to send a copy of a DAF Form 1137 for member being	Sends notice with a copy of the member's DAF Form 1137 to the	The gaining CC reviews the DAF Form 1137 and files it at the unit	

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Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
	reassigned Permanent Change of Assignment (PCA) (see notes 4 and 11)	gaining commander		
5	A notice to send a UIF when MilPDS confirms PCS departure (see notes 5,6, and 7)	Sends notice with the UIF to the gaining unit/FSS (for Individual Reservist send to unit of assignment)	The gaining unit /FSS, reviews the UIF for accuracy, verifies data system, and makes required corrections, files the UIF	Contacts the losing unit/FSS when documentation is not complete
6	A Transaction Register notice that a member's UIF has expired	Verifies the accuracy of the disposition date, makes required changes	Determines there is no information that extends the UIF disposition date	Destroys the UIF
7	A Transaction Register notice that a member's UIF has expired	Verifies the accuracy of the disposition date, makes required changes	Discovers new information that extends the UIF disposition date	Retains the UIF for 10 duty days pending receipt of the new information, or adds the new information and updates UIF data
8	A notice when a member enters dropped-from-the-rolls status (see note 8)	Gives UIF to FSS/Force Management personnel	Force Management personnel places the documents in Automated Records Management System and forwards to AFPC	AFPC destroys UIF if duty status changing to deceased
9	A notice that a member in <u>dropped-from-the-rolls status</u> has <u>been returned to duty</u> (see note 8)	Contacts <u>FSS/Force Management</u> and requests UIF	FSS/Force Management coordinates the return of the UIF	AFPC returns UIF
10	A UIF or UIF document on a person not	Verifies the member's status (TDY, TDY en	Returns the documents to the	

Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
	served now or in the foreseeable future by the FSS (see note 9)	route, PCS, pending assignment canceled or changed, or the documents misrouted)	appropriate FSS or the member's last unit of assignment for processing	
11	A notice that a member is within 120 days of Report No Later than Date (see note 11)	Verifies receipt of the DAF Form 1137	Requests that the losing unit or MPF, forward copies of DAF Form 1137 according to rule 3, if they do not arrive as expected	
12	A notice that a member is in confinement as a result of court-martial punishment (see note 10)		CSS or servicing FSS retains UIF with the following exceptions: For Individual Reservists, Selective Service forward UIF to HQ RIO Detachment; for personnel assigned to S7/S8 PAS Codes, forward to ARPC at ARPC/DPAMR 18420 E Silver Creek Ave, Bldg 390 MS 68, Buckley Space Force Base, CO 80011	
13	A notice that a member is in appellate leave status	Scans UIF with Field Personnel Record Group	FSS/Force Management retains	On receipt of decision by appellate authority, disposes of UIF accordingly

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Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
		awaiting appellate decision	UIF in Automated Record Management System	
14	A notice that a member is in Absent Without Leave or deserter status and UIF is due to expire	Verifies that the member is in Absent Without Leave or deserter status and that the UIF expiration date is accurate	When appropriate, updates UIF expiration date to 8 Aug 3888 and files notice in UIF (see paragraph 3.5.3)	Retains UIF awaiting further information
15	A notice that an officer is being separated and transferred to the AFR	Forwards the UIF to the appropriate Adverse Administrative Actions Manager of new assignment (reference Table 3.1)		
16	A notice that a member is released from an AFR or ANG unit and transferred to AFPC <u>nonparticipating</u> status (officer or enlisted)	Forward the UIF to ARPC/ DPAMR, 18420 E. Silver Creek Ave, Bldg 390 MS 68, Buckley Space Force Base, CO 80011		
17	A notice that a regular officer is discharged (not for cause) and records are being sent to ARPC	Forwards the UIF to ARPC/ DPAMR, 18420 E. Silver Creek Ave, Bldg 390 MS 68, Buckley Space Force Base, CO 80011		
18	A notice that an AFR or ANG officer is discharged	Destroys the UIF		

Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
	(without immediate reentry or continuation on active duty) or dies			
19	A notice that an enlisted member is separated or dies	Destroys the UIF		
20	A notice that a member is reassigned to the retired AFR	Destroys the UIF		
21	A notice that a member (officer or enlisted) is discharged for cause)	Destroys the UIF		
22	A notice that a member is being transferred from <u>non-participating (S7XXXXXX)</u> status to <u>participating assignment</u>	Forwards UIF to the gaining United States AFR assignment		
23	A notice that an AFR or ANG member (officer or enlisted) is being <u>reassigned within the United States AFR or ANG</u>	Forwards the UIF to the gaining AFRC or ANG assignment		
24	A notice that an officer of the United States AFR is being <u>transferred to active duty</u>	Forwards the UIF to the gaining RegAF unit		
Note: 1. This is a DAF Form 1137 annotation only. Commanders do not have to maintain documentation in the UIF.				

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Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
<p>2. The data system generates a transmittal notice for the DAF Form 1137 before the Report No Later than Date when a member's end assignment changes, and on short-notice assignments if the member is within 120 days of Report No Later than Date. When a member's end assignment changes or is canceled, MilPDS generates a Transaction Register remark, and the gaining unit destroys the advance copies of the DAF Form 1137.</p> <p>3. Keep a copy of the advance transmittal notice in the UIF folder until mailed. Destroy it afterwards.</p> <p>4. If the member is projected for a Personnel Reliability Program position, coordinate UIFs on gains with the unit Personnel Reliability Program monitor.</p> <p>5. File retained transmittal notices in the general correspondence file.</p> <p>6. Before sending the UIF electronically (encrypted), ensure its contents are complete and accurately recorded. Sign and date the DAF Form 1137 (reviewer's remarks, signature, date), certifying that you have reviewed it. Do not send electronically until you receive MilPDS confirmation.</p> <p>7. MilPDS produces a notice once it confirms a member's reassignment. Remove the pencil entries on the DAF Form 1137 before scanning and sending the UIF to the new unit.</p> <p>8. When a member enters or returns from dropped-from-the-rolls status, code or decode the UIF disposition.</p> <p>9. To determine the member's status, consult the worldwide personnel listing, CSS, MPF, or the losing Adverse Actions office.</p> <p>10. Upon receipt, before giving a UIF to the FSS, HQ RIO Organization or ARPC/DPAMR, the Adverse Administrative Actions Manager:</p> <p>10.1. Signs and dates the DAF Form 1137 (reviewer's remarks, signature, date), certifying he or she reviewed it.</p> <p>10.2. For a member reassigned as a prisoner (confinement) with or without discharge because of a court-martial conviction, the Adverse Administrative Actions Manager records the court-martial conviction on DAF Form 1137 and includes it in the UIF before forwarding the UIF to the Personnel Employment Element. For ANG only: the UIF will not be forwarded as the servicing FSS retains the UIF. (T-1)</p> <p>10.3. Delays forwarding and takes timely follow-up action pending receipt of the court-martial conviction and then gives the MPF the UIF for placement in Personnel Records Display Application.</p> <p>11. Does not apply to the AFR.</p>				
Note:				
1. This is a DAF Form 1137 annotation only. Commanders do not have to maintain documentation in the UIF.				
2. The data system generates a transmittal notice for the DAF Form 1137 before the Report No Later than Date when a member's end assignment changes, and on short-notice assignments if the member is within 120 days of Report No Later than Date. When a member's end assignment changes or is canceled, MilPDS generates a Transaction Register remark, and the gaining unit destroys the advance copies of the DAF Form 1137.				
3. Keep a copy of the advance transmittal notice in the UIF folder until mailed. Destroy it afterwards.				
4. If the member is projected for a Personnel Reliability Program position, coordinate UIFs on gains with the unit Personnel Reliability Program monitor.				

Rule	If Adverse Admin Actions Manager receives	Then the manager	And	And
5. File retained transmittal notices in the general correspondence file.				
6. Before sending the UIF electronically (encrypted), ensure its contents are complete and accurately recorded. Sign and date the DAF Form 1137 (reviewer's remarks, signature, date), certifying that you have reviewed it. Do not send electronically until you receive MilPDS confirmation.				
7. MilPDS produces a notice once it confirms a member's reassignment. Remove the pencil entries on the DAF Form 1137 before scanning and sending the UIF to the new unit.				
8. When a member enters or returns from dropped-from-the-rolls status, code or decode the UIF disposition.				
9. To determine the member's status, consult the worldwide personnel listing, CSS, MPF, or the losing Adverse Actions office.				
10. Upon receipt, before giving a UIF to the FSS, HQ RIO Organization or ARPC/DPAMR, the Adverse Administrative Actions Manager:				
10.1. Signs and dates the DAF Form 1137 (reviewer's remarks, signature, date), certifying he or she reviewed it.				
10.2. For a member reassigned as a prisoner (confinement) with or without discharge because of a court-martial conviction, the Adverse Administrative Actions Manager records the court-martial conviction on DAF Form 1137 and includes it in the UIF before forwarding the UIF to the Personnel Employment Element. For ANG only: the UIF will not be forwarded as the servicing FSS retains the UIF. (T-1)				
10.3. Delays forwarding and takes timely follow-up action pending receipt of the court-martial conviction and then gives the MPF the UIF for placement in Personnel Records Display Application.				
11. Does not apply to the AFR.				

Chapter 4

CONTROL ROSTER

4.1. Who Uses the Control Roster. Commanders (or civilian equivalents) use the control roster to establish a six-month observation period. AFRC, ARPC, HQ RIO, or TAG may establish longer observation periods, not to exceed twelve-months, for Reserve and Guard personnel, if deemed appropriate.

4.2. Use of a Control Roster. Consideration should be given to prior incidents, acts, failures, counseling, and rehabilitative efforts. A brief incident of substandard performance or an isolated breach of standards, not likely to be repeated, should not usually result in an individual's placement on the control roster. UIF establishing authorities inform members on the control roster their performance and behavior must improve or they may face more severe administrative action or punishment. **(T-1)**

4.2.1. Commanders may direct an Officer Performance Report or Enlisted Performance Report before entering or removing an individual from the control roster. The UIF establishing authority must periodically counsel personnel on the control roster about their improvement or failure to improve. **(T-2)**

4.2.2. When placing an officer on the control roster who is eligible or selected for promotion, or a selective continuation appointment, a commander must decide if the officer is mentally, physically, morally, and professionally qualified to assume the higher grade. **(T-1)** If not, initiate action to find the officer not qualified, delay the projected promotion, or remove the officer from the list (see DAFI 36-2501 or AFI 36-2504). **(T-1)**

4.2.3. The UIF establishing authority should not place an individual on the control roster as a substitute for more appropriate administrative, judicial, or nonjudicial action. Placement on the control roster does not shield an individual from other appropriate actions.

4.2.4. The control roster is cleared at 2359 hours on the last day of the observation period or on the date a member separates, retires, or dies. UIF establishing authorities may take subsequent control roster action only if a new incident or failure occurs. **(T-1)**

4.2.5. PCS or PCA reassignment procedures for personnel on the control roster are:

4.2.5.1. If the member is put on the control roster, and will leave an overseas area before the end of the observation period, and is otherwise eligible, the commander may extend the member's Date Eligible to Return from Overseas a maximum of 120 days (long tour area only). A commander who decides to involuntarily extend the Date Eligible to Return from Overseas should advise the MPF as soon as possible.

4.2.5.2. If the PCS is mandatory (does not include PCS without PCA for separation processing), the losing base Adverse Administrative Actions Manager removes the UIF code 2. The manager then notes on the individual's DAF Form 1137 that "control roster action expired due to mandatory Permanent Change of Station" before transferring the UIF to the gaining unit. Control roster action expires on the date the member departs. **Note:** This does not apply to unit moves when the member retains the same leadership.

4.2.5.3. If the PCS is not mandatory, the person remains eligible for PCS if the observation period expires before the Report No Later Than Date. The UIF establishing authority

advises the MPF of the person's control roster status; the MPF notifies AFPC. AFPC determines the individual's assignment eligibility (DAFI 36-2110, *Total Force Assignments*).

4.2.5.4. For AFR assignments, individuals remain eligible for permanent change of station while on the control roster. The losing commander, or equivalent advises the MPF (for unit program) or the losing HQ RIO Detachment Commander (for the Individual Reservist program) by indicating on the AF Form 1288, *Application for Ready Reserve Assignment*, that the member is on the control roster and annotating the UIF disposition date in the remarks section. After reviewing the AF Form 1288, the gaining unit commander (in coordination with the HQ RIO Detachment Commander) will decide if the assignment is appropriate and will approve or disapprove the assignment. **(T-1)**

4.2.5.4.1. Delay PCA when an individual is on the control roster. If the PCA is essential to the mission and the losing and gaining commanders concur, the person may be reassigned, but remains on the control roster.

4.2.5.4.2. For colonel and colonel select AFR assignments, do not use the AF Form 1288. For colonel and colonel select assignments, the member annotates they are on a control roster on the application coversheet. AF/REG will process the application and annotate control roster status during approval process and provide to hiring authority during selection process. **(T-1)**

4.2.5.5. For ANG statutory tour Assignments, individuals will not normally be eligible for PCS/PCA while on the control roster. **(T-3)** Any requests for PCS/PCA movement while members are on a control roster should be forwarded to NGB/HR for staffing to the appropriate approval authority.

4.2.5.6. For ANG members in Title 32 assignments, individuals remain eligible for PCS while on the control roster. The losing commander advises the MPF Career Development section (for unit program) or the gaining unit by indicating on the AF Form 1288, that the member is on the control roster and annotating the UIF disposition date in the remarks section. After reviewing the AF Form 1288, the gaining commander will decide if the assignment is appropriate and will approve or disapprove the assignment. **(T-3)**

4.2.6. For USSF, RegAF, AFR, and ANG, the commander, or equivalent cancels all formal training for members during the period they are on the control roster. **(T-1)**

4.2.7. The commander, or equivalent may not put individuals on the control roster who are in TDY or PCS status, to include en route.

4.2.8. An individual's time on the control roster does not stop and start for periods of TDY, ordinary leave, or change in immediate supervisor. For example, if an individual on the control roster requests 2 weeks leave, the control roster time does not stop for the 2 weeks the individual is on leave and then start again. The six-months is continuous regardless of the individual's leave or TDY status.

4.3. Initiating and Maintaining the Control Roster. The Adverse Administrative Actions Manager shall retrieve and maintain the control roster for the commander. **(T-1)** Commanders will use the DAF Form 1058 to initiate control roster action. **(T-1)** USSF and RegAF members must acknowledge the action and have 3 duty days to submit a statement on their behalf before the DAF

Form 1058 is finalized. **(T-2)** If the member refuses or fails to acknowledge the action, the commander will sign the DAF Form 1058 indicating, "Member refused to acknowledge." **(T-2)** The commander advises the individual of their final decision. File any statement or document provided by the individual in response to the control roster in the UIF. Additional materials submitted by the member in mitigation, extenuation, or defense are not part of the record. Evidence and any other written materials considered as a basis for imposing the control roster are not part of the record. Placement on the control roster is a mandatory UIF entry. **(T-2)**

4.3.1. An ARC member not in a duty status, who departs the duty area prior to the 3 duty days allowed for acknowledging intended actions, has 45 calendar days from the date of receipt of the certified letter to acknowledge the notification, intended actions, and provide pertinent information before the commander makes the final decision. In calculating the time to respond, the date of receipt is not counted, and if the individual mails their acknowledgment, the date of the postmark on the envelope serves as the date of acknowledgment. The individual is presumed to be in receipt of official correspondence if it is hand delivered or delivered by certified mail to the individual's address or best available address.

4.3.2. A control roster will not be created or maintained on members assigned to the non-participating AFR status (PAS S7XXXXXX). **(T-1)**

4.4. Who Can Add or Remove Individuals to or from the Control Roster. The below individuals have authority to add or remove any assigned or attached officer and enlisted member to or from the control roster. Upon receipt of a DAF Form 1058, or memorandum signed by the member's current wing or delta commander (or equivalent) or issuing authority, whichever is higher, remove member from control roster. This removal option applies regardless of how long the action was on file.

4.4.1. Commanders on G-series orders at all levels for members assigned or attached to their units. Commanders must be senior to the member. **(T-1)** Qualified civilian directors may also add or remove individuals to or from control rosters.

4.4.2. The commander, deputy commander, staff director and directors at MAJCOM/FLDCOM, Field Operating Agencies, and Direct Reporting Units.

4.4.3. Chief of Staff, Chief of Space Operations, Deputy Chiefs of Staff, Deputy Chief of Space Operations, Assistant Chiefs of Staff, other heads of staff agencies, and Directors assigned to Headquarters, United States Air and Space Forces.

4.4.4. Comparable officers within the Office of the SAF, Office of the Joint Chiefs of Staff, and Office of the Secretary of Defense.

4.4.5. The senior Air Force or Space Force officer assigned to a joint command.

4.4.6. The HQ RIO Detachment Commanders for Civil Air Patrol Reserve Assistance Program and the Admissions Liaison Officer Program.

Chapter 5

REPORTING DEMOGRAPHIC INFORMATION ON ADVERSE ADMINISTRATIVE ACTIONS AGAINST SERVICE MEMBERS

5.1. Issuers of Administrative Action. Any individual who issues a LOC, LOA, or LOR will:

5.1.1. Ensure the recipient acknowledges the final disposition of the action. **(T-1)** Once the recipient acknowledges receipt of the final disposition, the record will become a finalized record. **(T-1)** Annotate on the administrative action if the member fails to acknowledge receipt or provide a response.

5.1.2. Within three (3) duty days of completion, route the finalized record and supporting documentation to the immediate commander of the person issuing the administrative action. **(T-1)** Members of the Air Force Reserve will provide this information at the end of regularly scheduled drills. **(T-1)** When the recipient is an ANG member, an electronic copy of the finalized record, supporting documentation, and issuer's required demographic information will be provided within five (5) duty days as follows: to the appropriate Air National Guard Readiness Center Commander (ANGRC/CC) if the recipient is on a Title 10 statutory tour order; to the 201 MSS/CC if the recipient is on Title 10 orders and assigned to the 201 MSS for administrative control; to the wing or delta commander at the recipient's home station if the Airman is in a Title 32 status. **(T-1)**

5.2. Commander's Responsibilities.

5.2.1. Upon receipt of the finalized record, the issuer's immediate commander will review the rank, age, gender, race, and ethnicity of both the issuer and the recipient as it is listed in their official DAF record. **(T-1)**

5.2.2. The issuer's commander will provide the required data to their servicing Office of the Staff Judge Advocate (SJA) within five (5) duty days for USSF and RegAF, within five (5) days of the end of the calendar year quarter for members of the Air Force Reserve, and in accordance with [paragraph 5.1.2](#) for the ANG. Commanders will coordinate with their servicing SJA to determine the method of providing the information. **(T-1)** The data provided to the servicing SJA will include:

5.2.2.1. Type of administrative action issued, final administrative action, underlying offense(s), rank, age, gender, race, and ethnicity of issuer. **(T-1)**

5.2.2.2. Type of administrative action issued, number of prior administrative actions received, underlying offense(s), final administrative action, rank, age, gender, race, and ethnicity of recipient. **(T-1)**

5.2.3. The requirement to provide data to the servicing SJA is triggered based on when the administrative action becomes a finalized record in accordance with [paragraph 5.1.1](#). Commanders will report the required demographic information regardless of whether the action is later rescinded, downgraded, or not otherwise filed in the recipient's PIF or UIF. **(T-1)** The requirement is not triggered if the Administrative action is fully withdrawn during the Administrative Action process.

5.2.4. When the recipient is an ANG member, the issuer or issuer's commander will send the required information to the appropriate ANG commander identified in **paragraph 5.1.2. (T-1)**

5.2.5. Commanders should contact their servicing SJA's office for implementation guidance.

5.2.6. The Automated Military Justice Analysis and Management System will not be used to report Administrative Action demographic information pursuant to this Chapter. **(T-1)**

5.3. The Staff Judge Advocate (SJA) Responsibilities.

5.3.1. The servicing SJA will ensure demographic information for completed administrative actions is reported in accordance with this instruction. **(T-1)** The servicing SJA will inform commanders how to submit the demographic information to their office. **(T-1)**

5.3.2. The SJA should refer to DAFI 51-201, *Administration of Military Justice*, for status of discipline briefing requirements.

JOHN A. FEDRIGO
Principal Deputy Assistant Secretary of the Air
Force
(Manpower and Reserve Affairs)

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

5 USC § 552a, *Records Maintained on Individuals*

10 USC § 615, *Information Furnished to Selection Boards*

10 USC § 9013, *Secretary of the Air Force*

10 USC § 12301, *Reserve components generally*

10 USC § 14107, *Information furnished by the Secretary concerned to promotion boards*

DoDI 5400.11, *DoD Privacy and Civil Liberties Programs*, 29 January 2019

DoDI 1320.04, *Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation*, 3 January 2014

DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, 16 December 2020

DoDM 5210.42_AFMAN 13-501, *Nuclear Weapons Personnel Reliability Program*, 19 September 2018

AFPD 36-29, *Military Standards*, 11 April 2019

AFI 33-322, *Records Management and Information Governance Program*, 28 July 2021

DAFI 36-2110, *Total Force Assignments*, 02 August 2021

DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, 14 November 2019

DAFI 36-2501, *Officer Promotions and Selective Continuation*, 16 July 2004

AFI 36-2504, *Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force*, 9 January 2003

DAFI 36-2608, *Military Personnel Records Systems*, 16 April 2021

DAFI 51-201, *Administration of Military Justice*, 14 April 2022

DAFI 51-202, *Nonjudicial Punishment*, 4 January 2022

AFI 51-509, *Appointment to and Assumption of Command*, 14 January 2019

DAFMAN 90-161, *Publishing Processes and Procedures*, 15 April 2022

AFI 90-301, *Inspector General Complaints Resolution*, 28 December 2018

ANGI 36-2505, *Federal Recognition Examining Boards for Appointment or Promotion in the ANG Below General Officer*, 26 November 2012

Prescribed Forms

DAF Form 174, *Record of Individual Counseling*

DAF Form 1058, *Unfavorable Information File Actions*

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DAF Form 1137, *Unfavorable Information File Summary*

Adopted Forms

DAF Form 847, *Recommendation for Change of Publication*

AF Form 1288, *Application for Ready Reserve Assignment*

AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru SSgt)*

AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt thru CMSgt)*

AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officer)*

AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (TSgt thru CMSgt) – Air National Guard Only*

AF Form 3070E, *Record of Nonjudicial Punishment Proceedings (Officer) – Air National Guard Only*

Standard Form 65B, *U.S. Government Messenger Envelope – Medium*

Standard Form 65C, *U.S. Government Messenger Envelope – Large*

Abbreviations and Acronyms

AF—Air Force

AFBCMR—Air Force Board for Correction of Military Records

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFPC—Air Force Personnel Center

AFPD—Air Force Policy Directive

AFR—Air Force Reserve

AFRC—Air Force Reserve Command

AGR—Active Guard and Reserve

AIS—Adverse Information Summary

ANG—Air National Guard

ANGI—Air National Guard Instruction

ANGUS—Air National Guard of the United States

ARC—Air Reserve Component

ARPC—Air Reserve Personnel Center

CGO—Company Grade Officer

CMSgt—Chief Master Sergeant

CSS—Commander's Support Staff

DAF—Department of the Air Force

DAFI—Department of the Air Force Instruction

DoD—Department of Defense

DoDI—Department of Defense Instruction

DoDM—Department of Defense Manual

FLDCOM—Field Command

FSS—Force Support Squadron

HQ RIO—Headquarters Individual Reservist Readiness & Integration Organization

LOA—Letter of Admonishment

LOC—Letter of Counseling

LOR—Letter of Reprimand

MAJCOM—Major Command

MFR—Memorandum For Record

MilPDS—Military Personnel Display System

MperRGp—Master Personnel Records Group

MPF—Military Personnel Flight

NGB—National Guard Bureau

OPR—Office of Primary Responsibility

OSI—Office of Special Investigations

OSR—Officer Selection Record

PAS—Personnel Accounting Symbol

PCA—Permanent Change of Assignment

PCS—Permanent Change of Station

PIF—Personnel Information File

RegAF—Regular Air Force

RIC—Record of Individual Counseling

SAF—Secretary of the Air Force

SOUIF—Senior Officer Unfavorable Information File

TAG—The Adjutant General

TDY—Temporary Duty

TR—Transaction register

UIF—Unfavorable Information File

US—United States

USC—United States Code

USSF—United States Space Force

Office Symbols

AF/A1—Deputy Chief of Staff for Manpower, Personnel, and Services

AF/A1LE—Chief Master Sergeant Management Office

AF/A1LG—Air Force General Officer Management

AF/A1LO—Air Force Colonel Management Office

AF/A1P—Air Force Directorate of Military Force Management Policy

AF/RE—Chief of the Air Force Reserve

AF/REG—AFR Senior Leader Management

ANGRC/CC—Air National Guard Readiness Center Commander

ARPC/CC—Commander, Air Reserve Personnel Center

ARPC/DPT—Air Reserve Personnel Center, Total Force Services – Directorate of Personnel & Total Force Services

ARPC/DPAMR—Air Reserve Personnel Center, Reserve Services Program, Directorate of Assignments, Reserve Service Programs

NGB/CF—Director of the Air National Guard

NGB/HR—National Guard Bureau Human Resources Office

NGB-SL—National Guard Bureau Senior Leader Management Office

SAF/IG—Secretary of the Air Force, Office of the Inspector General

SAF/IGQ—Secretary of the Air Force, Office of the Inspector General, Complaints Resolution Directorate

SAF/IGS—Secretary of the Air Force, Office of the Inspector General, Senior Official Inquiries

SAF/MR—Assistant Secretary of the Air Force, Manpower and Reserve Affairs

SF/S1—Deputy Chief of Space Operations for Personnel

SF/S1LE—Chief Master Sergeant Management Office

SF/S1LG—Space Force General Officer Management

SF/S1LO—Space Force Colonel Management Office

SF/S1P—Space Force Force Management Policy

Terms

Absent Without Authority/Leave—Consider member absent without authority if the member is voluntarily absent without leave for more than 24 hours, or was voluntarily absent from a

scheduled duty or formation, a restriction, or an arrest. Scheduled duty or formation means doing a specified task at a specified time and place for a specified purpose. It is not the same as regularly scheduled duty. Consider the member absent without authority if not excused and absent from duty in civil confinement for more than 24 hours. The term absent without authority means the same as unauthorized absence.

Active duty—Full-time duty in the active military service of the United States, including active duty or full-time training duty in the Reserve Component. The term active duty for a period of more than 30 days means active duty under a call or order that does not specify a period of 30 days or less.

Active Guard and Reserve (AGR) Duty—Active Duty performed by a member of the Reserve Component of the Air Force or full-time National Guard for a period of 180 consecutive days or more for organizing, administering, recruiting, instructing, or training the Reserve components.

Air Reserve Component—The component of the United States Air Force that includes the AFR and ANG.

Airmen—Air Force Airmen are those people who formally belong to the United States Air Force and employ and support some aspect of the United States Air Force's air and space power capabilities. The term airman is often used in a narrow sense to mean pilot. An airman is any person who understands and appreciates the full range of air and space power capabilities and can employ or support some aspect of air and space power capabilities.

Control Roster—A rehabilitative tool for commanders to use for individuals whose duty performance is substandard or who fail to meet or maintain DAF standards of conduct, bearing, and integrity, on or off duty.

Commander—A commissioned officer who, by virtue of rank and assignment, exercises command authority over a military organization or prescribed territorial area, which under pertinent official directives is recognized as a 'command.' This designation is used in all Air Force organizations authorized to be led by a commander, except the US Air Force Academy, which is commanded by a superintendent, and school/academic organizations, which may be commanded by commandants (see AFI 51-509).

Commander's Management Rosters—Listings of personnel assigned within the unit possessing a quality indicator (UIF, control roster, Article 15, etc.). The Commander's Enlisted Management Roster also lists personnel possessing Enlisted Performance Report ratings which might indicate close observation of their performance is appropriate.

Duty Status—A member is considered to be in a duty status during any period of Active Duty, funeral honors duty or Inactive Duty Training; while traveling directly to or from the place at which funeral honors duty or inactive duty is performed; while remaining overnight immediately before the commencement of inactive duty training or between successive periods of inactive duty training, at or in the vicinity of the site of the Inactive Duty Training, if the site is outside reasonable commuting distance of the member's residence; and while remaining overnight at or in the vicinity of the place the funeral honors duty is to be performed immediately before serving such duty, if the place is outside of a reasonable commuting distance from the member's residence.

Dropped-from-Rolls Status—An administrative procedure that removes a member from the unit of assignment and reduces the unit's strength. It does not end the member's military status.

Drop from the Rolls Action—Dropping an enlisted member from the rolls of the DAF terminates the enlisted member's military status as of 2400 hours on the date specified in the orders.

Extraordinary Adverse Information—Adverse information that has received significant media attention or is of interest to the Senate Armed Services Committee.

Guardian or Guardians—A member or members of the United States Space Force.

Misconduct—Intentional conduct that is wrongful or improper.

Personally Identifiable Information—Includes the person's name, other particularly identifying descriptions (e.g., physical characteristics or identity by position, rank or organization) or other information about the person or the facts and circumstances involved that could reasonably be understood to identify the person (e.g., a female in a particular squadron or barracks when there is only one female assigned).

Personnel Information File—Are used in the handling of commander's or supervisor's assigned personnel. These files are maintained and kept under authority of 10 USC Section 9013 and prescribed in DAFI 36-2608.

Preponderance of the Evidence—A preponderance of the evidence merely means that it is more likely than not that a fact exists. Preponderance of the evidence is not determined solely by the volume of witnesses or documentary evidence supporting or refuting an allegation. Rather, it is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses.

Separate(d)/Separation—Severance of military affiliation as opposed to released from active duty. For the purposes of this instruction, separate(d)/separation refers to discharge from the Air/Space Force (either Regular or ARC).

UIF Establishing Authority—The person with the authority to establish a UIF. See [paragraph 3.1](#) for a complete list.

Wing/Delta Commander (or equivalent)—An officer in the grade of colonel or above who is a senior rater in the officer's chain of command.

Attachment 2

ADMINISTRATIVE ACTION PROGRAM SELF-INSPECTION CHECKLIST

A2.1. Self-Inspection Checklist:

A2.2. The proper authority is administering the UIF action.

A2.3. All mandatory documents are filed in the UIF.

A2.4. The UIF establishing authority refers optional UIF documents to the member before putting them in the UIF.

A2.5. The UIF establishing authority allows the member 3 duty days to acknowledge the intended UIF action before the commander completes the action, for ARC members not in an active duty status the individual has 45 calendar days from the date of receipt of the certified letter. (See [paragraph 3.2.4](#) of this instruction.)

A2.6. The UIF establishing authority advises the member about the decision regarding the UIF within the required time limit.

A2.7. The UIF establishing authority considers filing disciplinary actions completed before the UIF was established in a UIF.

A2.8. The unit receives a copy of DAF Form 1137 from the Adverse Administrative Actions Manager when a UIF is established or changed. The UIF establishing authority reviews UIFs before a Permanent Change of Station or Permanent Change of Assignment.

A2.9. The UIF establishing authority and the Office of the Staff Judge Advocate review UIFs on an annual basis.

A2.10. The UIF establishing authority or UIF establishing authority's representative replies to UIF recommendations made by the FSS or the Office of the Staff Judge Advocate.

A2.11. The UIF establishing authority discusses early removal of a UIF document with the Office of the Staff Judge Advocate.

A2.12. The UIF establishing authority uses DAF Form 1058 to remove documents from the UIF, citing the specific document

A2.13. The Adverse Administrative Actions Manager marks the front and back of envelopes containing UIF information CONTROLLED UNCLASSIFIED INFORMATION.

A2.14. The commander decides what happens to the UIF once the member returns from Absent Without Leave, deserter, or non-participant status.

A2.15. The commander considers a control roster observation period for members who demonstrate substandard duty performance or fail to maintain DAF standards.

A2.16. The commander periodically (at least every 60 days) counsels personnel on the control roster about their improvement.

A2.17. The commander considers directing an Officer or Enlisted Performance Report before entering or removing a member from the control roster.

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A2.18. The commander considers the member's service and overseas retainability before putting the member on the control roster.

A2.19. The commander removes the member from formal training during the control roster observation period.

A2.20. The proper authority places the member on the control roster using DAF Form 1058.

A2.21. The letter of reprimand, admonishment, counseling, or RIC is prepared correctly.

A2.22. The member replied to a letter of reprimand, admonishment, or counseling within 3 duty days. For ARC members not in a duty status, the individual has 45 calendar days from the date of receipt of the certified letter. (See [paragraph 3.2.4](#))

A2.23. Documentation of adverse administrative actions officers receive while TDY or deployed is forwarded to the unit commander for file in the UIF, PIF, MPerRGp, and Officer Selection Record as applicable.

A2.24. The commander is aware that once the control roster expires the individual will not be placed back on the control roster unless a separate incident occurs. (T-1)

Attachment 3

UIF LEGAL REVIEW CHECKLIST

Name:	Rank:	Unit:

1. ☐ Yes ☐ No ☐ N/A Is the UIF folder marked with the individual's correct name?
2. ☐ Yes ☐ No ☐ N/A Is the UIF folder marked front and back with "Controlled Unclassified Information"?
3. ☐ Yes ☐ No ☐ N/A Was an automated listing (Commander Enlisted/Officer Management Roster) of all current UIFs provided, AND did the listing for this UIF match the documents contained in this UIF?
4. ☐ Yes ☐ No ☐ N/A Is the proper UIF establishing authority (see paras. 3.1 and 3.2) making the decision to file the records in the UIF?
5. ☐ Yes ☐ No ☐ N/A Are documents filed in the UIF with an entry on the DAF Form 1137, with associated DAF Forms 1058 AND with appropriate disposition date(s) on the DAF Form 1137?

Note: Mandatory documents for enlisted members are Article 15s with punishment exceeding 1 month (enlisted), court-martial or civilian court convictions; all Article 15s and LORs for officers.
6. ☐ Yes ☐ No ☐ N/A Did the DAF Form 1058 indicate the member was served copies of the optional UIF documents before they were put in the UIF?
7. ☐ Yes ☐ No ☐ N/A Was the member given 3 duty days (45 calendar days for Air Reserve Component members not in a duty status) to acknowledge the intended UIF action on the DAF Form 1058?
8. ☐ Yes ☐ No ☐ N/A Did the UIF establishing authority advise the member about the UIF decision on the DAF Form 1058?
9. ☐ Yes ☐ No ☐ N/A Does the DAF Form 1137 contain the incident summary, disposition date, the UIF establishing authority's evaluation of the incident, the commander's dated signature, AND the administrative action taken?
10. ☐ Yes ☐ No ☐ N/A Did the Adverse Administrative Actions Manager (or First Sergeant, if the member is enlisted) sign and date each entry?

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11. ☐ Yes ☐ No ☐ N/A Is the LOC/LOA/LOR prepared properly and correctly, giving the member 3 duty days (or 45 calendar days) to submit additional matters?
- Does the letter state:
1. What the member did or failed to do, citing specific incidents and their dates?
 2. What improvement is expected?
 3. That further deviation may result in more severe action.
 4. The evidentiary documents used to support the action?
 5. Member has 3 duty days (or 45 calendar days) to submit rebuttal documents for consideration by the initiator.
 6. Any written response provided by the member and/or his or her counsel will become part of the record.
 7. The initiator of the letter has 3 duty days (or 45 calendar days) to advise the individual of the final decision regarding any comments submitted.
 8. Does the letter contain a Privacy Act statement?
12. ☐ Yes ☐ No ☐ N/A If document(s) have been removed, has the DAF Form 1137 been sanitized by erasing/whiting out comments about the removed document(s)?
13. ☐ Yes ☐ No ☐ N/A Is there an DAF Form 1058 or memorandum for each time a document was removed early from the UIF, citing the specific document? Member should also acknowledge early removal.
14. ☐ Yes ☐ No ☐ N/A Did the UIF establishing authority decide to establish a UIF within 6 months of the date of the document/action, AND is the member still within the same enlistment?
15. ☐ Yes ☐ No ☐ N/A Is any control roster correctly initiated with a DAF Form 1058?
1. Did the member acknowledge the action in Block III of the form?
 2. Was the UIF establishing authority's action at least 3 duty days (or 45 calendar days) after acknowledgement?
 3. Does the time period of any control roster action exceed 6 months minus one day (or 12-months for a member of the Air Reserve Component)? It may not. (See AFI 90-301 and DAFI 36-2501).
16. ☐ Yes ☐ No ☐ N/A Does the UIF contain matters submitted by the member in response to the RIC/LOC/LOA/LOR? The answer should be yes. (See AFI 90-301 and DAFI 36-2501).
17. ☐ Yes ☐ No ☐ N/A Does the UIF contain matters submitted by the member in response to an Article 15? The answer should be no. (See AFI 90-301 and DAFI 36-2501).

18. Did the commander or equivalent forward copies of all adverse information
Yes No N/A to SAF/IG on general officers and general officer selects? The answer
should be yes. (see AFI 90-301 and DAFI 36-2501)
19. Did the commander or equivalent forward copies of the initial and updated
Yes No N/A DAF Form 1137 for officers in the grade of Colonel and below to the
officer's servicing and gaining major command or field command (para.
2.4.2.4.4) (Regular Air Force and Air Force Reserve only)? Did the
commander forward copies of the initial and updated DAF Form 1137 for
officers in the grade of Lieutenant Colonel and below to the officer's
installation Inspector General for forwarding to SAF/IGQ in accordance
with AFI 90-301 as applicable (Air National Guard only)?
20. Did the commander or equivalent forward copies of all adverse information
Yes No N/A to SAF/IGQ for officers in the grade of Major (O-4) and Lieutenant Colonel
(O-5)? The answer should be yes. (see AFI 90-301)
21. Are there any adverse actions contained in the UIF that were implemented
Yes No N/A without coordination with the legal office? The answer should be no.
1. If yes, was the level of censure (i.e., administrative or nonjudicial)
appropriate for the alleged offense(s)?
22. Has the correct expiration date been entered in the UIF for the document(s)
Yes No N/A referenced above?
If not, what is the correct expiration date? _____

Disposition dates for common situations are as follows:

1. LOC/LOA/LOR (enlisted): 1 year from the date the UIF establishing authority signs section V of DAF Form 1058 (enlisted). **Note:** If there are more than 14 days between the date on the DAF Form 1058 and the date of the LOC/LOA/LOR, create a Memorandum for Record documenting the discrepancy and use the date of the LOC/LOA/LOR.
2. LOC/LOA/LOR (officer): Two years from the date the commander signs section V of DAF Form 1058. Only the member's current wing/delta commander (or equivalent), imposing or issuing authority, whichever is higher, may authorize early removal. **Note:** If there are more than 14 days between the date on the DAF Form 1058 and the date of the LOC/LOA/LOR, create a Memorandum for Record documenting the discrepancy and use the date of the LOC/LOA/LOR.
3. Article 15s (enlisted) with punishment of 31 days or more: date the punishment or suspension was complete or the date the judgment was vacated (minimum); two years from the date of the commander's punishment decision (maximum).

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4. Article 15s (officer): Four years from the date the commander's punishment decision, or Permanent Change of Station, transfer to another component, or separation plus one year, whichever is later.
 5. Court-martial convictions: Two years from the date the sentence was adjudged (enlisted); four years from the date the sentence was adjudged or Permanent Change of Station, transfer to another component, or separation plus one year, or completion of sentence, whichever is later (officer).
 6. Civilian convictions with possible sentence greater than one year or death: two years from the date the sentence was final.
 7. Control Roster Action: Member can only be on a control roster for six-months minus one-day (up to 12 months for Reservists) after the commander signs Section V on the DAF Form 1058; record of a control roster action can remain in a UIF for up to 1 year after the commander or equivalent signs Section V on the DAF Form 1058
23. ☐ Yes ☐ No ☐ N/A Does the UIF establishing authority have the authority to remove the document(s) earlier than the expiration date?

In accordance with DAFI 36-2907, *Adverse Administrative Actions*, we have completed the legal review of the UIF on the member indicated on the top of this form and find it:

☐ Legally Sufficient ☐ Legally Insufficient;
see attached
comments ☐ Legally sufficient, subject to
the attached comments being
appropriately addressed
Date

Assistant Staff Judge Advocate,
Unit

Attachment:
Legal Comments

I compared the automated listing for this UIF to the actual documents in this UIF folder to ensure database integrity. **Note:** *The commander should respond to the legal review and state what was resolved and what still needs resolution. A commander may attach a "Legal Comments Resolution" document but must reference the attachment in the response.*

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Attachment 4

SAMPLE GUIDANCE FOR RELEASE OF REPORT MEMORANDUM

Letterhead

MEMORANDUM FOR [Respondent's Name]

FROM: [Insert Office]

SUBJECT: Guidance for the Release of [Name of Report/Investigation]

The attached Report of Investigation is provided to you CONTROLLED UNCLASSIFIED INFORMATION in responding to your [command action, such as letter of reprimand]. As these are protected documents, you and your attorney must comply with the provisions of the Privacy Act and AFI 90-301, *Inspector General Complaints Resolution*. Furthermore, you should be aware that improper release of information contained therein may constitute a violation of the Privacy Act, with potential civil and criminal penalties.

Although you may utilize and/or attach these documents in your response to the [command action], you may not otherwise copy or distribute this Report of Investigation, or allow any other party to gain access to this Report of Investigation without prior consultation with [owner of the Report of Investigation/i.e., SAF/IGS] and prior approval of [owner of the report]. Furthermore, you are instructed to destroy these records upon completion of this action or return them to this office.

Please do not hesitate to contact [Point of Contact's name] at [contact information] with any questions or concerns you may have on the proper release or disposal of this record.

Signature Block

Attachment:
Report

Attachment 5**SAMPLE ADMINISTRATIVE LETTER**

Date

MEMORANDUM FOR [RANK FIRST M. LAST]

FROM: Organization/Office Symbol [Issuer's organization and office symbol]

SUBJECT: Letter of [Counseling/Admonishment/Reprimand]

1. Investigation has disclosed [the basis for the action, including what the member did or failed to do, citing specific incident(s) and their date(s)].

2. You are hereby [counseled/admonished/reprimanded]! [Discuss the impact of what the member did or failed to do]. [What improvement is expected]. Your conduct is unacceptable and further deviation may result in more severe action.

3. The following information required by the Privacy Act is provided for your information.

AUTHORITY: 10 USC § 9013. PURPOSE: To obtain any comments or documents you desire to submit (on a voluntary basis) for consideration concerning this action. ROUTINE USES:

Provides you an opportunity to submit comments or documents for consideration. If provided, the response you submit becomes a part of the record. DISCLOSURE: Your written acknowledgment of receipt and signature are mandatory. Any other comments or documents you provide are voluntary.

4. [For Space Force, Regular Air Force, Active Guard and Reserve, Air Reserve Component statutory tour members, or Air National Guard members in Title 10 status (officer and enlisted)]: You will acknowledge receipt of this letter of [counseling/admonishment/reprimand] immediately by signing the first indorsement. Within 3 duty days from the day you received this letter, you will provide your response by signing the second indorsement below. Any comments or documents you wish to be considered concerning this letter must be submitted at that time, and will become part of the record, consistent with DAFI 36-2907, *Adverse Administrative Actions*, paragraph 2.4.2.5.. After receiving your response, I intend to notify you of my final disposition of this action within 3 duty days.

5. [For Air Reserve Component members not in a duty status]: You will acknowledge receipt of this letter of [counseling/admonishment/reprimand] immediately by signing the first indorsement. Within 45 calendar days from the day you received this letter, you will provide your response by signing the second indorsement below. Any comments or documents you wish to be considered concerning this letter must be submitted at that time, and will become part of the record, consistent with DAFI 36-2907, *Adverse Administrative Actions*, paragraph 2.4.2.5.. After receiving your response, you will be notified of my final decision regarding any comments submitted by you within 45 calendar days.

Signature

Issuing Authority's Duty Title, Organization

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[Attachment(s):

Enumerated documents as appropriate]

1st Ind to Organization/Office Symbol [of issuer], date, Letter of

[Counseling/Admonishment/Reprimand]

Recipient's Rank First M. Last

Date

MEMORANDUM FOR Organization/Office Symbol [Issuer's organization and office symbol]

I acknowledge receipt and understanding of this letter on _____ at _____ hours. I understand that I have [3 duty days][45 calendar days] from the date I received this letter to provide a response and that I must include in my response any comments or documents I wish to be considered concerning this letter of [counseling/admonishment/ reprimand].

Signature

Letter Recipient

2nd Ind, Recipient's Rank First M. Last

Date

MEMORANDUM FOR Organization/Office Symbol [Issuer's organization and office symbol]

I have reviewed the allegations contained in this letter of [counseling/admonishment/reprimand]. (I am submitting the attached documents in response) (I hereby waive my right to respond).

Signature

Letter Recipient

3d Ind, Organization/Office Symbol [Issuer's organization and office symbol]

Date

MEMORANDUM FOR RECIPIENT RANK FIRST M. LAST

(I have considered the response you submitted on _____.) (You waived your right to submit a response to this action). I have decided to [withdraw the letter of [counseling/admonishment/reprimand] [sustain the letter of counseling/admonishment/reprimand] [reduce the action to a letter of admonishment/counseling]. [For officers only: Issuing authority must forward any adverse information as defined in [paragraph 1.2.1](#) to the officer's commander for filing in the member's Officer Selection Record.]

Signature

Issuing Authority's Duty Title, Organization

4th Ind to Organization/Office Symbol [of issuer], date, Letter of
[Counseling/Admonishment/Reprimand]

Recipient's Rank First M. Last

Date

MEMORANDUM FOR Organization/Office Symbol [Issuer's organization and office symbol]

I acknowledge receipt of the final decision regarding disposition of this letter of
[counseling/admonishment/reprimand] on _____ at _____ hours.

Signature
Letter Recipient

Note: The 1st Indorsement (Ind) is dated the same day the member receives the letter; the 2d Ind is dated within 3 duty days (or 45 calendar days for Air Reserve Component members not in a duty status); the 3d Ind should be dated within 3 duty days (or 45 calendar days) of the 2d Ind. When the first indorsement occurs on any page other than the letterhead page, it must include the citation line for the letter. In this example, the 1st Ind is the first indorsement to occur on a new page. The citation line for the indorsement memorandum consists of the indorsement number followed by the Organization/Office Symbol, SUBJECT, and date of the original memorandum. The citation line ends with the indorsement date: for administrative actions this should be the same as the letter of reprimand date.

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Attachment 6

**SAMPLE MEMORANDUM FOR RECORD CAPTURING SUBSTANTIATED
INVESTIGATIONS WITHOUT WRITTEN COMMAND ACTION, TO INCLUDE
VERBAL COUNSELING**

Letterhead

Date

MEMORANDUM FOR [GRADE FIRST M. LAST]

FROM: Organization/Office Symbol [Issuer's organization and office symbol]

SUBJECT: Substantiated Investigation Without Written Command Action

1. The attached Adverse Information Summary (AIS) is referred to you for comment before it is filed in your Master Personnel Records Group (MPerRGp) and Officer Selection Record (OSR) per DAFI 36-2907, *Adverse Administrative Actions*.

2. In accordance with DAFI 36-2907, I am required to capture any substantiated findings from an officially documented investigation or inquiry, for which no written command action was taken, for inclusion in your MPerRGp and OSR. This is your opportunity to submit comments on the AIS before it is filed in your military personnel file. This memorandum, the AIS, and your comments (should you choose to submit them) will be filed in your MPerRGp and OSR.

The following information required by the Privacy Act is provided for your information.

AUTHORITY: 10 USC § 9013. PURPOSE: To obtain any comments or documents you desire to submit (on a voluntary basis) for consideration concerning this action.

ROUTINE USES: Provides you an opportunity to submit comments or documents for consideration. If provided, the response you submit becomes a part of the record.

DISCLOSURE: Your written acknowledgment of receipt and signature are mandatory. Any other comments or documents you provide are voluntary.

3. [For Space Force, Regular Air Force and full-time Air Reserve Component officers (Active Guard and Reserve, Air Reserve Technicians, and officers serving in designated recall programs under 10 USC § 12301(d), etc.): You will acknowledge receipt of this memorandum immediately by signing the first indorsement. Within 3 duty days from the day you received this letter, you will provide your response by signing the second indorsement below.

4. [For all other Air Reserve Component members]: You will acknowledge receipt of this memorandum immediately by signing the first indorsement. Within 45 calendar days from the day you received this letter, you will provide your response by signing the second indorsement below.

Signature

Issuing Authority's Duty Title,
Organization

[Attachment(s): Adverse Information Summary]

1st Ind to Organization/Office Symbol [of issuer], date, Memorandum for Record
Recipient's Grade First M. Last Date

MEMORANDUM FOR Organization/Office Symbol [Issuer's organization and office
symbol]

I acknowledge receipt and understanding of this letter on _____ at _____
hours. I understand that I have [3 duty days-Active Duty][45 calendar days- part time
reserve/guardsmen] from the date I received this letter to provide a response and that I
must include in my response any comments or documents I wish to be filed with the
Adverse Information Summary in my MPerRGp and OSR .

Signature
Letter Recipient

2nd Ind, Recipient's Grade First M. Last Date

MEMORANDUM FOR Organization/Office Symbol [Issuer's organization and office symbol]

I have reviewed the contents of this Memorandum for Record. (I am submitting the attached
documents in response) (I hereby waive my right to respond).

Signature
Letter Recipient

3d Ind, Organization/Office Symbol [Issuer's organization and office symbol]

Date MEMORANDUM FOR RECIPIENT GRADE FIRST M. LAST
(I have reviewed the response you submitted on _____.) (You waived your
right to submit a response to this action. This Memorandum of Record and the Adverse
Information Summary will be placed in your MPerRGp and OSR). (This Memorandum
for Record, the Adverse Information Summary, and your response will be placed into
your Officer Selection Record.)

Signature
Issuing Authority's Duty Title,
Organization

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Attachment 7

SAMPLE ADVERSE INFORMATION SUMMARY (T-0)

Grade, Name, Armed Force, Component

GRADE AND POSITION AT THE TIME OF ALLEGATIONS:

WHAT MEMBER DID:

INVESTIGATING AGENCY:

FINDINGS:

DATE FINDINGS APPROVED:

COMMAND ACTION TAKEN:

REASON FOR COMMAND ACTION:

Attachment 8 (T-0)

DISPOSITION OF ADVERSE INFORMATION FOR INCLUSION IN THE OSR

Figure A8.1. FGO Adverse Information Disposition.

FGO Adverse Disposition				
Type	Retroactive	Adverse Issued Before 1 Jan 12	Adverse Issued Between 1 Jan 12 - 26 Feb 21	Disposition of Adverse Issued After 26 Feb 21
LOC "Standalone"	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Not required to be placed in OSR.
Not Substantiated Finding from investigation	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Not required to be placed in OSR.
Substantiated Finding without CC Action	YES	Not required to be placed in OSR.	Must be placed in OSR. (Note 1).	Must be placed in OSR (Note 1).
Substantiated Finding with verbal counseling	YES	Not required to be placed in OSR.	Must be placed in OSR. (Note 1).	Must be placed in OSR (Note 1).
LOC From Substantiated Finding	YES	Not required to be placed in OSR.	Must be placed in OSR.	Must be placed in OSR.
LOA	YES	Not required to be placed in OSR.	Must be placed in OSR.	Must be placed in OSR.
LOR	YES	Not required to be placed in OSR.	Must be added to OSR if not already included (Note 2).	Must be placed in OSR.
Article 15	YES	Must be added to OSR if not already included (Note 2).	Must be added to OSR if not already included (Note 2).	Must be placed in OSR.
Extraordinary Adverse	YES	Must be added to OSR if not already included (Note 2).	Must be added to OSR if not already included (Note 2).	Must be placed in OSR.
Approved court-martial findings of guilt	YES	Must be added to OSR if not already included (Note 3).	Must be added to OSR if not already included (Note 3).	Must be placed in OSR (Note 3).
Relief from Command	YES	Not required to be placed in OSR.	Must be added to OSR if not already included	Must be placed in OSR

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(for cause)			(Note 2).	
Developmental Education Removal (for cause)	YES	Not required to be placed in OSR.	Must be added to OSR if not already included (Note 2).	Must be placed in OSR
Note: 1. Must be documented with a memorandum for record and filed in the MPerRGp and OSR. 2. Information already in OSR must remain subject to guidance in this instruction as defined paragraph 1.2. 3. Unless the findings are overturned on appeal or set aside in their entirety, and the member is not subsequently found guilty at a rehearing or new trial 4. This chart applies the rule to types of dispositions issued and/or accrued when the member was an FGO.				

Figure A8.2. CGO Adverse Information Disposition.

CGO Adverse Disposition				
Type	Retroactive	Adverse Issued Before 1 Jan 12	Adverse Issued Between 1 Jan 12 - 26 Feb 21	Disposition of Adverse Issued After 26 Feb 21
LOC "Standalone"	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Not required to be placed in OSR.
Not Substantiated Finding from investigation	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Not required to be placed in OSR.
Substantiated Finding without CC Action	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Must be placed in OSR.
Substantiated Finding with verbal counseling	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Must be placed in OSR (Note 1).
LOC From Substantiated Finding	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Must be placed in OSR.
LOA	NO	Not required to be placed in OSR.	Not required to be placed in OSR.	Must be placed in OSR.
LOR	NO	Not required to be placed in OSR.	Not required to be placed in OSR. (Note 2)	Must be placed in OSR.

Article 15	YES	Must be added to OSR if not already included (Note 2).	Must be added to OSR if not already included (Note 2).	Must be placed in OSR.
Extraordinary Adverse	YES	Must be added to OSR if not already included (Note 2).	Must be added to OSR if not already included (Note 2).	Must be placed in OSR.
Approved court-martial findings of guilt	YES	Must be added to OSR if not already included (Note 3).	Must be added to OSR if not already included (Note 3).	Must be placed in OSR (Note 3).
Relief from Command (for cause)	YES	Not required to be placed in OSR.	Not required to be placed in OSR.	Must be placed in OSR.
Developmental Education Removal (for cause)	YES	Not required to be placed in OSR.	Not required to be placed in OSR.	Must be placed in OSR.

Note:

1. Must be documented with a memorandum for record and filed in the MPerRGP and OSR.
2. Information already in OSR must remain subject to guidance in this instruction as defined in **paragraph 1.2**.
3. Unless the findings are overturned on appeal or set aside in their entirety, and the member is not subsequently found guilty at a rehearing or new trial.
4. This chart applies the rule to types of dispositions issued and/or accrued when the member was a CGO.

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Attachment 9

SAMPLE NOTICE OF RELIEF OF COMMAND MEMORANDUM

Letterhead

Date

MEMORANDUM FOR [GRADE FIRST M. LAST]

FROM: Organization/Office Symbol [Issuer's organization and office symbol]

SUBJECT: Relief of Command

1. I have decided to relieve you of command of the [organization/office symbol] for cause, in accordance with AFI 51-509, *Appointment to and Assumption of Command*, paragraph 14.2, effective immediately.
2. I have reached this decision after careful consideration and after notifying [Issuer's MAJCOM/FLDCOM/CC].
3. You may contact your career field manager to begin working a follow-on assignment.

Signature
Issuing Authority's Duty Title,
Organization

Received on [Date]

Signature
Letter Recipient

Exhibit 6

101690

DEPARTMENT OF THE AIR FORCE OPENING STATEMENT

BEFORE THE

HOUSE ARMED SERVICES SUBCOMMITTEE ON MILITARY PERSONNEL

FEBRUARY 28, 2023

UPDATE ON COVID-19 VACCINATION IMPLEMENTATION, RESCISSION,
AND REQUIREMENTS

STATEMENT OF:

THE HONORABLE GINA ORTIZ JONES, UNDER SECRETARY OF THE AIR FORCE

NOT FOR PUBLICATION UNTIL RELEASED
BY THE COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

Chairman Banks, Ranking Member Kim, distinguished members of the Armed Services Committee and this subcommittee, thank you for the opportunity to appear before you today. It is my pleasure to be able to discuss the Department of the Air Force's (DAF's) highly effective efforts throughout the COVID-19 pandemic. The steps used to protect our total force—both military and civilian—enabled the DAF to continue protecting the Nation and defend its interests around the globe at a time of unprecedented challenge. I will also address the efforts underway to implement the rescission of the mandate while continuing to take care of our personnel and execute global missions on a daily basis.

I am grateful to be sitting here today, speaking without a mask on, with relatively high confidence that I will remain healthy, and that if I fall ill, the risk of death from the effects of COVID-19 are far less likely than early in the pandemic. Additionally, I am grateful that we have efficacious treatments should they be needed. This was not the case 26 months ago. December 2020, when the Food and Drug Administration (FDA) first granted the Emergency Use Authorization for the Pfizer COVID-19 vaccine, was the deadliest month for COVID-19-related deaths in the United States. That month, our Nation experienced more than 65,000 confirmed and probable COVID-19-related deaths, raising our total count to over 334,000 deaths since the start of the pandemic. It was also that month that the Centers for Disease Control and Prevention initiated new travel restrictions to and from the United Kingdom, where we have a significant force presence, to contain a new variant that was 70% more transmissible.

When Secretary of Defense Austin mandated immunization for service members on August 24, 2021, our national death toll had risen to over 634,000. Those circumstances drove Secretary of the Air Force Frank Kendall's decision to implement the earliest vaccination deadline amongst the Military Departments. The decision to immunize was the right decision at

the time, and in fact, the only choice given the criticality of our mission. I will never forget those dire summer months when I would receive a notification, sometimes as many as two a day, about a DAF teammate who died due to COVID-related complications—only to read they were unvaccinated.

Vaccination was essential in allowing us to deploy, rotate our forces to countries that mandated vaccination, and most importantly, keep the men, women, and dependents of the DAF healthy. As they have for decades, the vast majority of our Airmen and Guardians complied with the lawful order to vaccinate. Of the over 500,000 total force Airmen and Guardians, approximately 98% [99% of Regular Air Force and Space Force or 326,000 personnel; 94.3% of Air National Guard or 105,000 personnel; and 95.9% of Air Force Reserve or 70,000 personnel] followed the Secretary of Defense's lawful order—as a result, our force was able to focus on the mission.

While vaccination has received the overwhelming majority of public attention, I want to reinforce that the Department did not rely solely on immunization to protect the force. The DAF, in concert with the Office of the Secretary of Defense (OSD) and other Services, took a holistic approach to combat COVID-19. Through a series of prophylactic measures such as masking, physical distancing, telework, remote work, travel, and deployment restrictions and control, we maintained readiness while much of industry and the commercial sector ground to a stand-still. The DAF continued its flying mission, operating from austere locations conducting world-wide operations, executing strike and mobility operations in support of the Joint Force, maintaining our nuclear deterrent, and ensuring we continued to induct and train our force. Our collective safety measures kept our depots running, facilities maintained, bases operating, and missions executed.

The Space Force is tasked with highly classified, no-fail missions which largely preclude telework or remote work. During the pandemic, our Space Force fully supported combatant command missions 24 hours a day, seven days a week, using vaccination, preventive measures, and solid operational planning, including standby crews ready to support exposure, quarantine, and isolation requirements. Commanders leveraged the full suite of capabilities to take care of their people and effectively execute the mission.

The DAF simultaneously supported national efforts to augment civilian emergency response, mass testing and immunization, and healthcare infrastructure, notably hospitals operating beyond capacity. The Air Force Medical Service deployed 2,724 Total Force Airmen (2,412 Active Duty and 312 Reserve Component) in support of COVID-19 response operations during the pandemic. We deployed contingency Medical Strike Teams across the country to provide immediate and acute support. We deployed 10 vaccination teams to 10 cities, in 9 states, to deliver 1.6 million vaccinations. And, we deployed 612 medical personnel to support 33 locations in 18 states to provide in-patient, critical care at hospitals experiencing significant personnel shortages. This lifesaving care provided to our communities was only possible because of the vaccination rates within the Force and the safety measures we employed.

Religious liberty is a foundation of our society and our Constitution—it is among those rights that Airmen and Guardians have sworn their lives to defend. In accordance with long-held policy, and based upon law, we considered all requests for medical, administrative, and religious accommodations seriously and thoroughly. Our ability to accommodate our members' religious convictions had to be weighed against the impact of that accommodation on military readiness. While each request was weighed on its merits, the collective impact of the accommodations was also considered. Readiness and deployability are the hallmark of the force and must remain so.

On January 10, 2023, Secretary Austin rescinded the COVID-19 vaccination requirement for military personnel, at the direction of Congress. Accordingly, on January 23, 2023, Secretary Kendall formally rescinded his order to vaccinate as well as the force implementation guidance associated with the mandate. We are actively engaged with OSD and the other Services to expeditiously implement Secretary Austin's guidance. No individual currently serving in the DAF will be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds. We are finalizing how to expeditiously remove adverse actions solely associated with refusal to vaccinate following any denial of such requests. We have also ceased ongoing reviews of current service members' religious, administrative, or medical accommodation requests for exemption from the COVID-19 vaccine, to include accommodation denial appeals. Additionally, we have taken action to ensure that there are no bars to enlistment or commissioning, to include those whose commissions were held in abeyance. In concert with OSD, we are developing the policy, processes, and procedures for those who were discharged after submitting an accommodation request and wish to re-enter the force.

Notwithstanding these actions, there may be situations in the future when vaccination status will be a consideration. For example, this may occur when a host-nation has a vaccination requirement for entrance that may impact deployment or even permanent relocation of members. Additionally, vaccination may need to be a consideration for members serving in unique positions, such as at austere locations with limited medical care. Barring unanticipated developments with COVID-19, we expect such cases to be rare and if considered, they will receive appropriate review at the general officer level. The DAF will continue to promote COVID-19 vaccination and available boosters to our service members, employees and family

members in accordance with FDA and governmental recommendations, while being clear there is not a COVID-19 vaccination mandate. We will take actions consistent with the law and adapt our policies to continue to protect the force as we face evolving epidemiology in the future.

Let me close by expressing my profound respect for the men and women of the DAF; for their tenacity, resolve, hard work, resilience, and indomitable spirit in the face of this pandemic. Thank you again for the opportunity to appear before this distinguished committee. I look forward to addressing your questions.