



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
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IN REPLY REFER TO

JAG/COMNAVLEGSVCCOMINST 5814.1A

MAR 25 2011

JAG/COMNAVLEGSVCCOM INSTRUCTION 5814.1A

Subj: POST-TRIAL PROCESSING

Ref: (a) Manual for Courts-Martial (2008)
(b) Case Management Tracking and Information System
(CMTIS) Business Rules

Encl: (1) Level 1 Post-Trial Checklist
(2) Level 2 Post-Trial Checklist
(3) SJA's/Legal Officer's Recommendation Checklist
(4) CA's Action Checklist
(5) Post-trial Process Handling and Reporting
Requirements

1. Purpose. To establish minimum requirements for post-trial processing of records of trial (ROT) and to update and reissue post-trial checklists for Region Legal Service Offices (RLSO), staff judge advocates (SJAs) and legal officers (LOs) to use during the court-martial review process, ensuring expeditious and efficient handling of cases from sentencing date through final action.

2. Cancellation. This instruction supersedes JAG/COMNAVLEGSVCCOMINST 5814.1, which is hereby cancelled. This instruction is a major revision and should be reviewed in its entirety.

3. Scope. The provisions of this instruction apply to all RLSOs, independent staff judge advocates and legal officers performing post-trial review functions for convening authorities within their respective areas of responsibility (AOR) and judge advocates, judges, and legal officers responsible for, or involved with, the appellate review processing of cases. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) shall issue separate post-trial processing guidance consistent with this instruction that shall apply to Marine Staff Judge Advocate Offices (OSJA), and Legal Services Support Sections (LSSS)/Law Centers (LC).

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4. Discussion

a. Post-trial processing of courts-martial is the subject of significant appellate litigation. Most recently, the Court of Appeals for the Armed Forces (CAAF) decision in *U.S. v. Moreno*, 63 M.J. 129 (CAAF 2006) placed the burden on the government to ensure timely post-trial processing of military justice cases by establishing time guidelines that the government must meet in disposing of a case after a sentence is adjudged at trial. Failing to meet these guidelines creates a presumption that the delay in processing the case is unreasonable and, unless that presumption is rebutted, the appellate court must assess the impact of delay on the due process rights of the appellant, and direct any needed relief, including dismissal of the case. The guidelines require the government, in cases where a punitive discharge and/or confinement in excess of one year is awarded, to ensure: (1) the Convening Authority takes action on the case within 120 days after sentencing; (2) the case is docketed at the Navy-Marine Corps Court of Criminal Appeals (NMCCA) within 30 days after the Convening Authority takes action; and (3) NMCCA issues an opinion within 18 months after the case is docketed.

b. Previously, post-trial tracking was conducted by local commands, each utilizing their own internally-created reports and procedures to manage cases. However, such a system has proven insufficient in ensuring the *Moreno* guidelines are consistently met. The deficiencies of the current process highlight the JAG Corps' need for a uniform system to track and report cases throughout the entire post-trial process.

c. The Case Management Tracking and Information System (CMTIS) will serve as the primary information technology/knowledge management tool to track and report cases throughout the post-trial process. Post-trial processing units, established at the discretion of RLSO Commanding Officers (COs), will utilize installation and region Staff Judge Advocates and their staffs as necessary throughout the area of responsibility (AOR) to provide logistical assistance for the RLSO's post-trial processing divisions at headquarters. Finally, implementing and utilizing revised checklists will improve the quality of the post-trial process while simultaneously reducing post-trial processing times.

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5. Action

a. Each RLSO post-trial processing division (PTPD), post-trial processing unit (PTPU), independent SJA, or legal officer involved with post-trial processing of ROTs shall use enclosure (1) or (2), as appropriate, in the preparation of each record of trial (ROT) and shall attach it to the ROT prior to forwarding to the convening authority for review. A copy of enclosures (3) and (4) shall be attached to the ROT for use by the reviewing independent SJA/legal officer.

b. Judge advocates serving in billets designated as "staff judge advocates" or otherwise performing duties as required by reference (a), specifically Rule for Court-Martial (R.C.M.) 1106, and non-judge advocate legal officers, shall use enclosures (3) and (4) to assist in the preparation of the staff judge advocate/legal officer recommendation, convening authority action and promulgation order.

c. Each RLSO PTPD, PTPU, SJA, or legal officer involved with post-trial processing of ROTs is responsible for ensuring complete and timely post-trial processing of courts-martial. The RLSO responsible for prosecuting a case retains primary responsibility to proactively monitor the completion of required post-trial actions, document action taken and/or reasons for delay in every stage of the post-trial process, and forward completed ROTs to appellate authorities. Enclosure (5) provides specific ROT post-trial processing handling and reporting requirements. Finally, for all cases where a punitive discharge or confinement in excess of one year is awarded, each RLSO shall maintain a complete copy of the ROT, convening authority action, promulgating order and all post-trial actions and directives until a Notice of Completion of Appellate Review (NOCAR) is received.

6. Responsibilities

a. SJA to CMC shall:

(1) issue separate post-trial processing guidance consistent with this instruction that shall apply to OSJAs, LSSSs and LCs;

(2) be primarily responsible for post-trial processing of Marine Corps cases until the case is received by Navy and Marine Corps Appellate Review Activity (NAMARA).

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b. Deputy Commander, Region Legal Service Office (DCOM-RLSO) shall:

(1) be primarily responsible for post-trial processing of Naval Legal Service Command (NLSC) cases until the case is received by NAMARA;

(2) monitor NLSC cases received by NAMARA until the case is docketed by NMCCA;

(3) coordinate, as necessary, with the Assistant Judge Advocate General (Military Justice) to ensure timely post-trial processing of NLSC cases;

(3) direct Region Legal Service Offices to coordinate as necessary with NAMARA until the case is docketed with NMCCA.

(4) provide additional guidance consistent with this instruction, as necessary, to ensure timely post-trial processing of NLSC cases;

(5) provide post-trial processing reports for Navy military justice cases, as necessary, to the Judge Advocate General (JAG) and Deputy Judge Advocate General (DJAG)/Commander, Naval Legal Service Command (CNLSC).

c. Assistant Judge Advocate General (Military Justice) (Code 02) shall:

(1) be primarily responsible for post-trial processing of NLSC and Marine Corps cases from the time the case is received by NAMARA until the case is docketed by NMCCA;

(2) coordinate as necessary with SJA to CMC, DCOM-RLSO, and Chief Judge Department of the Navy (CJDON) to ensure timely post-trial processing of NLSC and Marine Corps cases;

(3) provide additional guidance consistent with this instruction, as necessary, to ensure timely post-trial processing of military justice cases;

(4) provide post-trial processing reports for Marine Corps military justice cases, as necessary, to the JAG and DJAG/CNLSC.

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(5) ensure NAMARA provides copies of the NOCAR to the convening authority and the RLSO which had initial post-trial responsibility to track and report the case.

(6) for USMC cases, ensure NAMARA provides copies of the NOCAR to the convening authority and the legal command which was designated by the SJA to CMC, in appropriately issued guidance consistent with this instruction, with initial post-trial responsibility to track and report the case.

(7) be responsible for keeping enclosures (1) through (4) current with applicable statutes, regulations and case law;

(8) conduct periodic policy review of the post-trial process, to include a written review of enclosures (1) through (4), every three years or sooner if necessitated by changes in applicable case law.

d. Chief Judge, Department of the Navy shall be responsible for establishing and maintaining timely and accountable post-trial processes for the appellate review of NLSC and Marine Corps cases, beginning when each case is docketed with NMCCA.

e. Region Legal Service Office Commanding Officers shall:

(1) ensure post-trial processing is completed in accordance with this instruction;

(2) issue a local instruction that:

(a) establishes a PTPD at headquarters that is responsible for overseeing all post-trial processing related matters throughout the AOR;

(b) identifies, as necessary, appropriately resourced and staffed RLSO-controlled installation or region SJA offices throughout their AOR to serve as PTPUs to assist the PTPD; and

(c) establishes processing guidelines for PTPUs throughout their AOR;

(3) Ensure members of the command assigned to perform post-trial processing duties receive sufficient training on the post-trial processing requirements set forth in this instruction and in references (a) and (b).

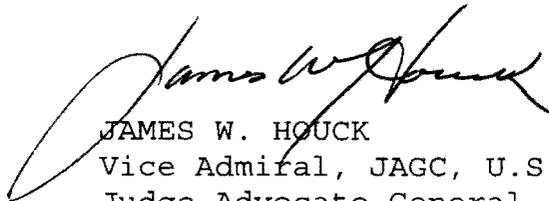
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f. Independent Staff Judge Advocates shall coordinate post-trial processing with the RLSO designated under this instruction as primarily responsible for post-trial processing of a case.

7. Enforceability. Case complexity, length of trial, availability of evidence, and additional duties of court-martial personnel contribute to the actual time required to complete the post-trial process. Inability or failure to comply with this instruction shall not constitute grounds for assignment of error on appellate review and shall not create any cause for relief against an otherwise valid nonjudicial, judicial, or administrative proceeding. The goals stated herein are for management purposes only.



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Distribution:

Electronic only via the Office of the Judge Advocate General website, <http://www.jag.navy.mil>

LEVEL 1 POST-TRIAL CHECKLIST

(For use in all General Courts-Martial and in Special Courts-Martial where the adjudged sentence includes a bad conduct discharge or one year confinement)

ICO _____

***Region Legal Services Offices (RLSO) are ultimately responsible for the accurate and timely completion of this checklist.

PART I: To be completed by RLSO PTPD/PTPU

- _____ Prepare Record of Trial (ROT) in accordance with guidance of Appendix 14, M.C.M.
- _____ Check administrative accuracy of all documents (Name, SSN, Command, dates).
- _____ Prepare report of results of trial form, if required, and attach to ROT. Note in results of trial whether a DNA sample and/or sex offender notification is required. JAGMAN 0149, A-1-j.
- _____ Attach the following items to the ROT in any case where an Art. 32 preceded referral of charges, whether charges were ultimately referred to a GCM or to a SPCM.
 - _____ Art. 32 appointing order
 - _____ Report of Art. 32 investigation (DD Form 457)
 - _____ SJA's Art. 34 pretrial advice letter
 - _____ Waiver of Art. 32, if applicable
- _____ Insert convening order in ROT. (If it is a copy, ensure it is certified true).
- _____ Insert amending orders, if any. (If it is a copy, ensure it is certified true).
- _____ Insert charge sheet in ROT. (Confirm all supplemental pages are attached, front and back).
- _____ Defense Counsel (DC) examine ROT, when unreasonable delay will not result. R.C.M. 1103(i)(1)(B).
Date completed:
_____ Email/Deliver ROT transcript to DC
_____ ROT transcript returned from DC
- _____ Trial Counsel (TC) examine ROT. R.C.M. 1103(i)(1)(A).
Date completed:
_____ Email/Deliver ROT transcript to TC
_____ TC review completed
_____ TC reviews corrections & signs
- _____ ROT authenticated by each military judge (MJ) participating in proceedings or substitute authentication. R.C.M. 1104(a)(2). [Note: If TC authenticated ROT for MJ, include statement explaining need for substitute authentication. R.C.M. 1103(b)(3)(E)].

Enclosure (1)

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_____ Authentication occurs within 50 days (SPCM) or 90 days (GCM) after completion of trial. Otherwise, authenticating/cognizant official has provided reasons for delay and appended to ROT.

Date completed:

_____ ROT to MJ
 _____ Authenticated ROT rec'd from MJ

_____ Original ROT and 6 copies prepared. R.C.M. 1103(b)(2), (3), (g) (Original and 2 copies to Navy and Marine Corps Appellate Review Activity (NAMARA); 1 to Naval Clemency Parole Board (NCPB); 1 to Staff Judge Advocate (SJA)/command; 1 to DC/accused; and 1 to RLSO)

_____ Include in original ROT and each copy all exhibits that were received into evidence; front and back pages:

_____ Prosecution
 _____ Defense
 _____ Appellate
 _____ Pre-Trial Agreement - Parts I and II
 _____ Motions and responses
 _____ MJ alone request, if any
 _____ Written continuance request with ruling
 _____ Written special findings by MJ
 _____ Enlisted members request
 _____ Members' questionnaires
 _____ Voir dire questions submitted
 _____ Members questions
 _____ All findings and sentencing worksheets
 _____ Appellate rights statement (Long and Short form included)
 _____ Power of attorney, if any
 _____ Waiver of appellate review, if any
 _____ Sealed exhibits (e.g. child pornography)
 _____ Other _____

_____ Other matters to attach to ROT if not included as an exhibit (as applicable):

_____ If trial was a rehearing or new or other trial of the same case, the ROT of the previous case(s)
 _____ Any written special findings made by MJ
 _____ Any exhibits marked as appellate exhibits and exhibits referred to on the record which were not admitted into evidence. (No "Blunk" letters - *U.S. v. Williams*, 57 M.J. 581 (NMCCA 2002))
 _____ Explanation for any failure to serve the ROT on the accused under R.C.M. 1104(b)

_____ Confirm all pages of transcript and all attached document are included (Page check: _____ Number of pages, _____ Pages are sequential, _____ Front and back of all two-sided documents are included).

_____ Validate index sheet.

_____ Ensure all attachments are copied and inserted into the ROT copies.

_____ Confirm compliance with requirements for National Security and classified information. R.C.M. 1104(b)(1)(D); SECNAVINST 5510.30 (series) and SECNAVINST 5510.36 (series); JAGMAN 0126.

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Date completed: _____ Copies made of ROT

____ RLSO serve copy of authenticated ROT on accused [or on DC, taking care to comply with R.C.M. 1104(b)(1)(C)]; (except sealed exhibits); attach all receipts in ROT (or explanation in lieu of). R.C.M. 1104(b)

Date completed: _____ Delivery of ROT to DC/ADC

____ RLSO deliver ROT to SJA/legal officer. (NOTE: IF MAILED, SEND CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR OTHER MOST EXPEDITIOUS, ACCOUNTABLE METHOD).

Date completed: _____ Delivery of ROT to CA/SJA

PART II: To be completed by Convening Authority's SJA/Legal Officer

____ Prepare staff judge advocate's/legal officer's recommendation (SJAR/LOR) and insert in ROT and all copies. R.C.M. 1106, JAGMAN 0151c.

Date completed: _____ LO/SJAR Prepared

____ Confirm that SJA/Legal Officer's Checklist (Enclosure 3) is complete.

____ Serve SJAR/LOR on Detailed Defense Counsel and accused; attach receipt of SJAR/LOR (or explanation in lieu of) to ROT and all copies. R.C.M. 1106(f).

Date completed: _____
_____ LO/SJAR delivered to DC
_____ LO/SJAR delivered to accused

____ Insert accused/and or DC response to SJAR/LOR in ROT, if provided. R.C.M. 1106(f)(4).

Date completed: _____
_____ DC submits clemency or additional matters
_____ DC requests clemency extension
_____ Amended SJAR to DC (if required)

____ Comment to convening authority (CA) on all matters raised under R.C.M. 1105 and any other clemency matters. [Only SJAs may respond to legal error].

____ Forward all responses and recommendations (including supplementary responses, recommendations and addendums) to CA for review. R.C.M. 1107.

____ Allegations of legal error raised by accused in response addressed in an addendum to the recommendation. R.C.M. 1106(d)(4). [SJA only].

V.P. E

_____ All other R.C.M. 1105, 1106, or other clemency matters addressed. Clemency matters should be addressed within 10 days.

_____ All supplementary recommendations raising new matter served on DC or accused; receipt in ROT (or explanation in lieu of). R.C.M. 1106(f)(7).

Date completed:

_____ SJAR provided to CA

_____ Attach other matters submitted by accused or DC, and any action on same, to ROT and all copies. R.C.M. 1105, R.C.M. 1106(f)(4), R.C.M. 1110; JAGMAN 0161 (Be careful not to attach "Blunk" matters - *U.S. v. Williams*, 57 M.J. 581 (NMCCA 2002)).

_____ Deferment requests
 _____ All clemency requests/recommendations
 _____ Other matters
 _____ 10-day waiting period complied with or extension granted (in writing)
 _____ or declination to submit matters

_____ Prepare CA's action and promulgating order using CA's input. R.C.M. 1107; JAGMAN 0153, 0155.

_____ CA's action checklist (Enclosure 4) complied with.

Date completed:

_____ CA's Action

_____ Attach CA's action/promulgating order or statement as to why CA cannot take action, include copy of letter of reprimand, if any. R.C.M. 1107, JAGMAN 0152(b)(4).

_____ Prepare appropriate copies of CA's action/promulgating order for distribution. R.C.M. 1114(c)(3), JAGMAN 0155.

Date completed:

_____ CA's Action received by accused and/or DC

_____ Complete time sheet on the back of the cover of the ROT, document and explain post-trial processing delays.

_____ Forward ROT and all post-trial documents (SJAR/SJAR Receipt, any time extensions, any matters relating to clemency, CA's action or explanation of failure to act, receipt of service of CA's action) and copies to RLSO for final review and forwarding to appropriate authority.

_____ Forward ROT to appropriate authority. JAGMAN 0153, 0154; R.C.M. 1111, R.C.M. 1112 [Note: If remand case and assigned an NMCCA number, it must always be forwarded to NAMARA (Code 40.31)] (**IF MAILED, SEND CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR OTHER MOST EXPEDITIOUS, ACCOUNTABLE METHOD**).

If there is a waiver of appellate review in writing:

_____ Forward ROT to a judge advocate for review. This may be the SJA for CA. R.C.M. 1111; JAGMAN 0153, 0154. [Note: Appellate review may not be waived with sentence to death].

_____ Judge advocate's review inserted in original ROT and all copies.
 _____ Copy of review to accused

Date completed:

_____ Receipt of CA's action by JA for review
 _____ JA review completed
 _____ Receipt of JA Review by OEGCMJ
 _____ OEGCMJ action (if required)

_____ Forward ROT and copies to the NAMARA (Code 40.31).

Date completed:

_____ Original ROT sent to OJAG / NAMARA

_____ Forward one copy of the ROT to the President, NCPB, if sentence includes an unsuspended punitive discharge or confinement for 12 months or more. JAGMAN 0153(b)(2).

If there is no waiver of appellate review:

_____ Forward original ROT and two copies to the NAMARA (Code 40.31)

_____ ROT forwarded to NAMARA within 10 days of CA's action. Otherwise, CA has provided explanation and appended to ROT. (Forwarding within 10 days after CA action allows NMCCA sufficient time to ensure case is docketed within 30 days after CA action as required by *U.S. v. Moreno*).

_____ Forward one copy of the ROT to the President, NCPB, if sentence includes an unsuspended punitive discharge or confinement for 12 months or more

_____ Forward one copy to accused/DC

_____ Prepare appropriate service record entries (usually pages 4, 7, 13).

_____ Maintain and distribute ROT in accordance with JAGMAN 0154c(2) and (3). [Shore activities: maintain 2 years after final action, then retire to National Personnel Records Center (NPRC). Fleet activities: maintain 3 years after final action, then retire to NPRC.]

_____ Include conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. R.C.M. 1108, R.C.M. 1109.

7.3.5

- _____ Include appellate court directives (i.e. orders to conduct a rehearing, supplemental orders, etc.).

- _____ Include records of former trial of the same case if case was a rehearing or new or other trial of the same case. R.C.M. 1103(b)(3)(A).

- _____ Confirm compliance with requirements for National Security and classified information. R.C.M. 1104(b)(1)(D); SECNAVINST 5510.30 (series) and SECNAVINST 5510.36 (series); JAGMAN 0126.

- _____ Confirm compliance with requirements for National Security and classified information. JAGMAN 0126, R.C.M. 1104(b)(1)(D), SECNAVINST 5510.30(series), SECNAVINST 5510.36 (series).

- _____ Provide copies of all post-trial actions and directives, to include SJAR/LOR, R.C.M. 1105 matters, promulgating order, CA's action, to RLSO.

LEVEL 2 POST-TRIAL CHECKLIST

(For use in all Special Courts-Martial where the adjudged sentence DOES NOT include a bad conduct discharge or one year confinement)

ICO _____

***Region Legal Services Offices (RLSO) are ultimately responsible for the accurate and timely completion of this checklist.

PART I: To be completed by RLSO PTPD/PTPU

___ Check administrative accuracy of all documents.

___ Ensure preparation of ROT in accordance with guidance of App. 13 or 14, M.C.M.

___ Prepare report of results of trial form, if required, and attach to ROT. Note in results of trial whether a DNA sample and/or sex offender notification is required. JAGMAN 0149, A-1-j.

___ Insert convening order in ROT. R.C.M. 1103(b)(2)(D). [If it is a copy, ensure it is certified].

___ Amending order inserted, if any. Certified, if a copy.

___ Insert charge sheet in ROT. R.C.M. 1103(b)(2)(D). [Ensure all supplemental pages are attached, front and back].

Date completed:

_____ Material mailed for transcription / given to CR/LN
_____ Completed transcription received at RLSO
_____ ROT assembled

___ DC examine ROT, when unreasonable delay will not result. R.C.M. 1103(i)(1)(B).

Date completed:

_____ Email/Deliver ROT transcript to DC
_____ ROT transcript returned from DC

___ TC examine ROT. R.C.M. 1103(i)(1)(A).

Date completed:

_____ Email/Deliver ROT transcript to TC
_____ TC review completed
_____ TC reviews corrections & signs

___ ROT authenticated in accordance with R.C.M. 1104(a)(2) and JAGMAN 0150. [Note: TC authenticates ROT for SPCMs in which a bad-conduct discharge was not adjudged, and any sentence to confinement and/or forfeitures of pay does not exceed six months. R.C.M.1104(a)(2); JAGMAN 0150. If TC authenticated ROT for the MJ, include statement explaining need for substitute authentication. R.C.M. 1103(b)(3)(E)]

Date completed:

_____ ROT to authenticating authority
_____ Authenticated ROT rec'd from MJ authenticating authority

Original ROT and 3 copies prepared. R.C.M. 1103(b)(2), 1103(b)(3), 1103(g). (Original and 1 copy to SJA/command; 1 to DC/accused; and 1 to RLSO.) Note that verbatim ROT is required where the sentence adjudged exceeds 6 months confinement or 6 months forfeiture of pay. In all other cases, a summarized report may be prepared instead.

Date completed: _____

Copies made of ROT _____

Include all exhibits in original ROT and each copy; front and back pages:

- ____ Prosecution exhibits
- ____ Defense exhibits
- ____ Appellate exhibits
 - ____ Pre-Trial Agreement - all pages
 - ____ Motions and responses
 - ____ MJ alone request, if any
 - ____ Written continuance request with ruling
 - ____ Written special findings by MJ
 - ____ Enlisted members request
 - ____ Members questionnaires
 - ____ Voir dire questions submitted
 - ____ Members' questions
 - ____ All findings and sentencing worksheets
 - ____ Appellate rights statement
 - ____ Power of attorney, if any
 - ____ Waiver of appellate review, if any
 - ____ Other _____

Other matters to attach to ROT if not included as an exhibit (as applicable):

- ____ Report/waiver of Article 32 investigation
- ____ SJA's Article 34 pretrial advice letter
- ____ If trial was a rehearing or new or other trial of the same case, the ROT of the previous case(s)
- ____ Any written special findings made by MJ
- ____ Any exhibits marked as appellate exhibits and exhibits referred to on the record which were not admitted into evidence. (No "Blunk" letters - *U.S. v. Williams*, 57 M.J. 581 (NMCCA 2002))
- ____ Explanation for any failure to serve the ROT on the accused under R.C.M. 1104(b)

Confirm all pages are included: Page check: sequential; # of pages: _____

Validate index sheet.

RLSO serve copy of authenticated ROT on accused [or on DC, taking care to comply with R.C.M. 1104(b)(1)(C)]; attach all receipts in ROT (or explanation in lieu of). R.C.M. 1104(b).

Date completed: _____

Delivery of ROT to DC/ADC _____

RLSO deliver ROT and copies to staff judge advocate/legal officer. **[IF MAILED, SEND CERTIFIED MAIL, RETURN RECEIPT REQUESTED]**.

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Date completed:

_____ Delivery of ROT to CA/LO/SJA

PART II: To be completed by Convening Authority's SJA/Legal Officer

_____ Attach accused response to ROT, if provided. R.C.M. 1105.

_____ Attach other matters submitted by accused or DC, and any action on the same, to ROT. R.C.M. 1105.

- _____ Deferment requests
- _____ All clemency requests
- _____ Other matters

Date completed:

_____ DC submits clemency or additional matters

_____ Comment to CA on all matters raised under R.C.M. 1105 and any other clemency matters. [Only SJAs may respond to legal error].

_____ If new matter in addendum, serve a copy on accused/DC.

Date completed:

_____ Addendum to DC (if required)

_____ Forward all responses and recommendations to CA for review under R.C.M. 1107.

_____ Prepare CA's action using CA's input. R.C.M. 1107.

_____ CA's action checklist complied with

Date completed:

- _____ CA's Action
- _____ CA's Action rec'd by accused and/or DC

_____ Attach CA's action or statement as to why CA cannot take action; include letter of reprimand, if any. R.C.M. 1107.

_____ Prepare promulgating order and appropriate copies for distribution. JAGMAN 0153, 0155; R.C.M. 1114(c)(3).

_____ Complete time sheet and the back of the cover of the ROT.

_____ Forward ROT to SJA of Officer Exercising GCM Authority (OEGCMA) for review. JAGMAN 0153; R.C.M. 1112. [ROT may have to be forwarded to OEGCMA for action or to the Judge Advocate General for action. R.C.M. 1112, R.C.M. 1201].

Date completed:

- _____ Receipt of CA's action by JA for review
- _____ JA review completed
- _____ Receipt of JA Review by OEGCMJ
- _____ OEGCMJ action (if required)

- _____ Insert judge advocate's review in original ROT and all copies.
R.C.M. 1112
- _____ Copy of review to accused. Date to accused _____.
- _____ Prepare appropriate service record entries.
- _____ Maintain and distribute ROT in accordance with JAGMAN 0154c(2) and (3).
[Shore activities: maintain 2 years after final action, then retire to National Personnel Records Center (NPRC). Fleet activities: maintain 3 years after final action, then retire to NPRC. Prepare appropriate service record entries.]
- _____ Include conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. R.C.M. 1108, R.C.M. 1109.
- _____ Include appellate court directives, i.e. orders to conduct a rehearing, supplemental orders, etc.
- _____ Include records of former trial of the same case if case was a rehearing or new or other trial of the same case. R.C.M. 1103(b)(3)(A).
- _____ Confirm compliance with requirements for National Security and classified information. JAGMAN 0126, R.C.M. 1104(b)(1)(D), SECNAVINST 5510.30(series), SECNAVINST 5510.36 (series).
- _____ Provide copies of all post-trial actions and directives, to include SJAR/LOR, R.C.M. 1105 matters, promulgating order, CA's action, to RLSO.

STAFF JUDGE ADVOCATE'S/LEGAL OFFICER'S RECOMMENDATION CHECKLIST

Executive Order 13468, R.C.M. 1106, JAGMAN 0151c
(Not required if accused is acquitted)

SJA's/LO's Recommendation ICO _____

- _____ Staff Judge Advocate (SJA)/Legal Officer (LO) is not disqualified under R.C.M. 1106(b).
- _____ Confirm preparation of ROT in accordance with guidance of Appendix 13 or 14, M.C.M.
- _____ Determine whether ROT has been properly authenticated.
 - _____ Authentication occurs within 90 days after completion of trial.
 - _____ Otherwise, authenticating/cognizant official has provided reasons for delay and appended to ROT.
- _____ Offenses, pleas, findings, and adjudged sentence set out. R.C.M. 1106.
- _____ Include clemency recommendation made in conjunction with the announced sentence by any member, MJ, or any other person.
- _____ Provide summary of accused's service record (optional)
 - _____ Length of service
 - _____ Character of service (average pros and cons, average evaluation traits for entire length of service, not only for current enlistment)
 - _____ All decorations/awards
 - _____ Records of prior nonjudicial punishment
 - _____ Previous convictions
 - _____ Other matters of significance
- _____ Explain nature and duration of any pretrial restraint.
- _____ Note any judicially ordered credit to be applied to confinement
- _____ Note existence of pretrial agreement (or attach copy), if any.
 - _____ Include terms and actions CA is obligated to take or reasons why CA is not obligated to take specific action under the agreement
- _____ Attach as enclosures all R.C.M. 1105 matters and other clemency submitted prior to recommendation.
- _____ Address all claims of legal errors and state whether corrective action on the findings or sentence is appropriate when an allegation of error is raised under R.C.M. 1105 or when deemed appropriate by the SJA. [Note: For SJAs only, legal officers do not address legal errors.]
 - _____ Note all R.C.M. 1105 or other clemency matters and include statement that they were taken into consideration.
- _____ Recommend specific action to be taken by CA on adjudged sentence after considering any clemency matters, any claims of legal error, and any pretrial agreement.
- _____ Include any optional matters.

Enclosure (3)

- ____ Notify accused and give opportunity to rebut adverse matters which are not part of the record and with knowledge of which the accused is not chargeable.

- ____ SJA or commissioned officer serving as legal officer who is not disqualified under R.C.M. 1106(b) signs recommendation.

- ____ Serve SJAR/LOR on accused and/or counsel per R.C.M. 1106(f). (Do not forward SJAR/LOR to convening authority until applicable time periods have run).
 - ____ Date to accused _____; counsel (civilian, detailed defense counsel) _____.
 - ____ Attach to the ROT a statement explaining why the accused was not personally served, if applicable.

- ____ If R.C.M. 1105 or R.C.M. 1106 matters or other matters are raised after original recommendation, include addendum to recommendation noting these issues. [Note: Only SJA may respond to legal errors].
 - ____ If addendum raises new matter (as defined in R.C.M. 1106(f)(7)), serve accused and counsel and give opportunity (at least 10 days) to respond prior to CA taking action.
 - ____ Date to accused _____; counsel _____.
 - ____ Attach to the ROT a statement explaining why the accused was not personally served, if applicable.

- ____ Note in recommendation that DNA processing is required, if appropriate. (Review results of trial or consult with trial counsel).

CONVENING AUTHORITY'S ACTION CHECKLIST

R.C.M. 1107, JAGMAN 0151a

ICO _____

- _____ Confirm preparation of Record of Trial (ROT) in accordance with guidance of Appendix 13 or 14, M.C.M.
- _____ Confirm ROT is prepared in accordance with R.C.M. 1103(b)(2)(B).
_____ If a verbatim transcript is required by R.C.M. 1103(b)(2)(B) or (c)(1) but cannot be prepared, ensure a that a ROT is prepared in accordance with b(2)(C) and note that the Convening Authority (CA) cannot approve a sentence in excess of that which may be adjudged at a special court-martial or one that includes a BCD, confinement for more than six months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay more than six months. R.C.M. 1103(f)(1).
- _____ If SPCM, ensure that the cumulative impact of the fine and forfeitures, whether adjudged or automatic by operation of Article 58(b), U.C.M.J. does not exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at a SPCM. Ensure forfeiture is in dollar amount.
- _____ If accused claims lack of mental capacity, comply with R.C.M. 706 and order a post-trial inquiry if necessary.
- _____ If accused is found not guilty by lack of mental responsibility, CA must commit the accused to a suitable facility pending an R.C.M. 1102A hearing.
- _____ Action shall not be taken earlier than 10 days after the latter of service of the ROT under R.C.M. 1104(b), or receipt of SJAR/LOR (or of addendum to recommendation if it contains new matter). Action that is not completed within 120 days after the sentence is announced must be mentioned in the action and a letter must be prepared in accordance with JAGMAN Section 0151(a)(4) forwarded to Code 20.
_____ Waiver of right to submit matters, in writing by accused
_____ Time period extended (no more than 20 additional days)
- _____ Offenses, pleas, findings, and adjudged sentence properly promulgated.
_____ Charges and specifications verbatim or accurate summary (*U.S. v. Glover*, 57 M.J. 696 (N.M.Ct.Crim.App. 2002))
- _____ Action states CA considered:
_____ Result of trial
_____ SJAR/LOR, if applicable
_____ Members' or military judge's clemency recommendation, if any
_____ Clemency matters submitted by anyone, if any
_____ Legal errors raised, if any
_____ Other matters raised under R.C.M. 1105 and R.C.M. 1106, if any.
[Note: Indicate that no matters were received if that is the case, also indicate a failure of accused or counsel to respond to SJAR/LOR.]

Enclosure (4)

- ___ Include any additional matters considered.
- ___ ROT
- ___ Personnel records of accused
- ___ Other matters deemed appropriate by CA
- ___ Notify accused and provide opportunity to rebut, if CA considers matters adverse to accused from outside record, with knowledge of which the accused is not chargeable
- ___ Address specific action with regard to findings, if applicable.
- ___ Rehearing on findings ordered
- ___ If rehearing or new trial ordered, reasons for disapproval
- ___ If no rehearing ordered on disapproved charges and specifications, statement of dismissal included
- ___ If "other" trial ordered, basis for declaring the proceedings invalid stated
- ___ Address specific action with regard to sentence adjudged.
- ___ Sentence consistent with pretrial agreement, if any. (Note: CA must consider accused's EAOS and the impact on any term of the PTA)
- ___ CA approve, disapprove, or mitigate sentence
- ___ CA execute portions of sentence, except any punitive discharge, that are not suspended (at this stage, punitive discharge may be approved, but may not be executed)
- ___ Comply with equivalencies under R.C.M. 1003 if sentence is mitigated
- ___ Sentence limited if ROT does not meet requirements of R.C.M. 1103(b)(2)(B) or (c)(1)
- ___ Rehearing on sentence ordered
- ___ If accused not reduced to E-1 as part of adjudged sentence, address automatic reduction (Article 58a, UCMJ).
- ___ If portion of sentence is suspended, inform accused of conditions in writing.
- ___ Note place of confinement, if confinement approved by CA.
- ___ Note deferment date, if granted.
- ___ Deferment rescinded. Date: _____
- ___ Give credit for illegal pretrial confinement as directed.
- ___ Give credit for other punishment (e.g. NJP for same offense at court-martial) as necessary.
- ___ Include copy of any reprimand ordered executed.
- ___ Note companion cases, if any. JAGMAN 0151(a)(5).
- ___ Must be signed by CA with authority to sign as stated below. (No "by direction" authorized).
- ___ If substitute CA, action notes CA is acting pursuant to a specific Request that is in compliance with R.C.M. 1107(a) and JAGMAN 0151(b) (Attach documentation of reasons for substitute CA to ROT - *U.S. v. Brown*, 57 M.J. 623 N.M.C.C.A. (2002)).

- _____ If action on rehearing or new trial, comply with limitations of R.C.M. 810(d).
- _____ If a Qualifying Military Offense (QMO), specify in promulgation order that DNA processing is required under 10 U.S.C. § 1565.
- _____ Immediately serve a copy of CA action and promulgating order on accused.
- _____ Forward receipt of service on accused to cognizant RLSO for inclusion in the ROT.

**Post-Trial Processing
Handling and Reporting Requirements**

Independent Staff Judge Advocates

Independent Staff Judge Advocates (SJAs) shall familiarize themselves with, and apprise their convening authority on, the reporting and handling requirements of this instruction and be prepared to assist Region Legal Service Office (RLSO) Post-Trial Processing Divisions (PTPDs) and Post-Trial Processing Units (PTPUs) as necessary to satisfy these requirements.

RLSOs

1. RLSOs shall use the Case Management Tracking and Information System (CMTIS) to track and report all post-trial processing of cases.

2. Case tracking and reporting responsibility.

a. The RLSO responsible for prosecuting a case shall track and report that case in CMTIS until no longer required to do so by this instruction, including circumstances where post-trial processing is conducted by independent SJAs. RLSO Commanding Officers (COs) shall consult with Deputy Commander, RLSO (DCOM-RLSO) to request any deviation from this procedure or to resolve questions concerning which RLSO is responsible for tracking and reporting a particular case.

b. For cases requiring appellate review, RLSOs shall be responsible for tracking and reporting cases from trial completion until the case is docketed with the Navy-Marine Corps Court of Criminal Appeals (NMCCA).

c. For cases not requiring appellate review, RLSOs shall track and report cases from conclusion of trial until the case is final within the meaning of Article 76, Uniform Code of Military Justice (UCMJ) and Rules for Courts-Martial (R.C.M.) 1209.

Reports

1. CMTIS is the primary tool for tracking and reporting post-trial processing status. To ensure that CMTIS reports are timely and accurate, RLSO COs will ensure that CMTIS data is entered in accordance with reference (b).

2. In addition to CMTIS-based reporting, RLSO COs shall provide weekly reports to the Office of the Judge Advocate General (Code 63) if the Convening Authority (CA) has not acted within 75 days of sentencing on any case in which the sentence included a punitive discharge or confinement for one year or more. This report shall include, at a minimum:

- a. the computed "day 120" (Moreno date) for post-trial processing;
- b. the current status of the case;
- c. an explanation of any excludable delay; and
- d. an assessment of the risk that the CA will not act within 120 days of sentencing.

Processing Guidelines

RLSOs shall adopt the following guidelines for post-trial processing of cases. In all cases, a complete copy of the authenticated Record of Trial (ROT) is forwarded to the CA the same day it is forwarded to the PTPU, if a PTPU will assist with post-trial processing. The ROT copy forwarded to the CA will include a letter from the RLSO CO outlining post-trial processing procedures, requesting a copy of the Art. 64 review, and providing a RLSO point of contact for the CA to use throughout post-trial processing.

1. Acquittal. The PTPD or designated PTPU will receive the original record of trial (ROT), and coordinate with the CA or legal officer (LO) to assist the command with issuing a promulgating order publishing the findings of the court-martial within (10) days of receipt of the ROT. Pursuant to JAGMAN 0154c, ROTs for all GCMs shall be forwarded to OJAG (Code 40) at 1254 Charles Morris Street SE, Suite B01, Washington Navy Yard, DC 20374-5124 immediately after completion of final action.

2. Special Courts-Martial (SPCM) in which the sentence does not include a punitive discharge or 1 year confinement, or SPCM that includes a punitive discharge or 1 year of confinement where the accused has waived appellate review under R.C.M 1110. The PTPD or designated PTPU will receive the ROT and coordinate with the CA/LO to meet the following guidelines:

- a. The PTPD or designated PTPU will immediately contact the CA to determine if assistance is required to prepare the draft

CA's action and promulgating order. If an SJA is assigned to the CA and no assistance is required, the PTPD or designated PTPU will promptly forward a copy of the ROT and monitor status. If no SJA is assigned to the CA or assistance is required, the SJA of the PTPU will prepare a proposed action and promulgating order for the CA and forward with a copy of the ROT within seven calendar days of receipt of the ROT.

b. Within two working days after the CA takes action, the PTPD or designated PTPU will obtain the original post-trial documents and prepare them for distribution in accordance with JAGMAN Section 0155(e).

c. Within three working days of receipt of the post-trial documents, the PTPD or designated PTPU will review the documents, insert them into the ROT and forward the original ROT to the SJA of the Officer exercising General Court-Martial jurisdiction over the CA for review under Article 64, UCMJ, for review themselves, or to cause another judge advocate to perform such a review.

3. SPCM that involves an officer or where the sentence includes a punitive discharge or 1 year of confinement (no waiver of review). The PTPD or designated PTPU will receive the ROT and coordinate with the CA/LO to meet the following guidelines:

a. The PTPD or designated PTPU will immediately determine whether the CA has an SJA/LO qualified to prepare the Staff Judge Advocate's Recommendation (SJAR) or Legal Officer Recommendation (LOR). If there is no SJA/LO or if the incumbent is disqualified, the PTPU must advise the CA that the CA may submit a request for assignment of a SJA to the cognizant RLSO. If the designated SJA is an attorney other than the current SJA of the PTPU, the PTPU will promptly forward a copy of the ROT to that SJA and not only monitor the status, but also provide any necessary support to that SJA to meet post-trial processing timelines as outlined below.

b. Within seven calendar days of receipt of the ROT, the SJA/LO should complete his/her recommendation and forward it to the defense counsel. Delays must be documented in the SJAR/LOR.

c. Pursuant to Rule for Courts-Martial (R.C.M.) 1105, defense counsel has 10 calendar days to respond to the SJAR/LOR. If requested, for good cause, the CA may extend the 10 calendar day period for an additional 20 calendar days.

d. Within three working days of receipt of defense comments, or if defense counsel fails to respond to the SJAR/LOR within 10 calendar days, the SJA/LO shall prepare a supplemental SJAR/LOR if required. Per R.C.M. 1106(f)(7), if the supplemental SJAR/LOR addresses new information, defense counsel for the accused and the accused is afforded the same time periods to respond to the new information. If no supplemental SJAR/LOR is required, the CA should be provided with the SJAR/LOR and proposed action/promulgating order.

e. Allow for approximately five calendar days to obtain signature from the CA. Within two working days after the CA takes action, the PTPD or designated PTPU shall obtain the original post-trial documents with appropriate copies for distribution from the CA/LO (see JAGMAN Section 0155(e)). Post-trial documents should be forwarded to the PTPD or designated PTPU via the fastest accountable method.

f. Within three working days of receipt of the post-trial documents, the PTPD or designated PTPU will review the documents and properly insert them into the records of trial. Copies of the CA's action/promulgating order will be distributed via regular mail by the PTPU. The original record of trial with the appropriate copies for Navy-Marine Corps Appellate Review Activity (NAMARA) will be sent via the most expeditious means (e.g. express mail, FEDEX, or similar means) to 1254 Charles Morris Street SE, Suite B01, (ATTN: Code 40), Washington Navy Yard, DC 20374-5124. Funding for costs associated with forwarding the original record of trial will be supplied by the CA. If applicable, the copy to the President of the Navy Clemency and Parole Board will be mailed via regular mail. Not all cases will be forwarded to NAMARA for review. In those cases where the CA disapproves that part of the sentence that triggers NAMARA review (a punitive discharge or one year of confinement), the case will be forwarded to a judge advocate of the GCMCA for review.

4. General Courts-Martial (GCM) that are convened by the Region Commander (regardless of whether appellate review has been waived). Records will be forwarded directly to the RLSO staff assigned to the Region Commander for processing to meet the following guidelines:

a. Within seven calendar days of receipt of the ROT, the SJA should complete his/her recommendation and forward it to the defense counsel. Delays must be documented in the SJAR.

b. Pursuant to R.C.M. 1105, defense counsel has 10 calendar days to respond to the SJAR. If requested, for good cause, the CA may extend the 10 calendar day period for an additional 20 calendar days.

c. Within 10 calendar days of either receipt of defense comments, or if defense counsel fails to respond to the SJAR, the SJA shall prepare a supplemental SJAR if required. Per R.C.M. 1106(f)(7), if the supplemental SJAR addresses new information, DC/accused is afforded the same time periods to respond to the new information. If no supplemental SJAR is required, the CA should be provided with the SJAR and proposed action/ promulgating order.

d. Allow for approximately five calendar days to obtain signature from the CA. RLSOs shall ensure that within 3 working days of the CA signing the action, a record of trial will be prepared for mailing. The original record of trial with the appropriate copies for NAMARA will be sent via the most expeditious means (e.g. express mail, FEDEX, or similar means) to OJAG (Code 40) at 1254 Charles Morris Street SE, Suite B01, Washington Navy Yard, DC 20374-5124. If applicable, the copy to the President of the Navy Clemency and Parole Board will be mailed via regular mail.

5. General Courts-Martial that are convened by a Convening Authority other than the Region Commander (regardless of whether appellate review has been waived). The original record of trial and appropriate copies will be forwarded to the SJA assigned to the GCMCA that convened the subject case. One copy of the record is forwarded to the PTPD or designated PTPU to not only monitor the status but also provide any necessary support to that SJA to meet post-trial processing timelines as outlined in paragraph 8(d) above. In all cases the PTPD or designated PTPU will provide support to ensure proper assembly of the record of trial and mailing of the records via the most expeditious means (e.g. express mail, FEDEX, or similar means) to OJAG (Code 40) at 1254 Charles Morris Street SE, Suite B01, Washington Navy Yard, DC 20374-5124 for additional tracking.

Post-trial Processing of Cases Subsequent to NMCCA Ruling

When an NMCCA ruling requires or permits additional post-trial action (corrected SJAR or CA's action; retrial or rehearing on sentence, DuBay fact-finding hearing, or other post-trial action) the AJAG (Military Justice) will have primary responsibility for the tracking and reporting in CMTIS of

subsequent action in the case, unless AJAG (Military Justice) delegates that responsibility to the DCOM-RLSO or to an officer designated by the SJA TO CMC, after consultation with DCOM-RLSO or to an officer designated by the SJA TO CMC. The CJDON remains responsible for monitoring the process within the NMCCA and the trial judiciary for any case in which additional post-trial action is required or permitted.