Professional Development Standards (PDS) Military Justice

Name: _____

Definition of Flexible Measurement Terms

Note: Where verbs express only the general level of learning for knowledge and understanding, this is intended to provide greater flexibility for measurement in observable ways. When determining achievement of learning, use the appropriate observable action for the assessment.

I. Know: The ability to retrieve information from memory.

Actions used to assess knowing include: recall, list, state, identify, reproduce, and recognize.

II. Understand or Comprehend: Connecting existing with new information and experience to form meaning and relate concepts to other situations.

Actions used to assess understanding include: explain, summarize, defend, generalize, give examples, give analogies, and paraphrase.

III. Review: Reading and examining a reference sufficient to grasp its meaning and the principle issue(s).

Actions used to assess a sufficient review include: explain, summarize, discuss, and generalize.

Core Competencies

1. **Preliminaries**
2. **Events to Watch**
3. **Ethical Obligations and Considerations**
4. **Court Rules and Officer of the Court**
5. **Sexual Offenses and VWAP Training**
6. **Non-Punitive Measures**
7. **Complaints and Inquiries**
8. **Non-Judicial Punishment**
9. **ADSEPS**
10. **ADSEP Advocacy**
11. **Pre-Trial/Case Screening**
12. **Witness Interviews**
13. **Speedy Trial**
14. **Discovery**
15. **Article 32 Preliminary Hearings**
16. **Arraignment**
17. **Motions and Objections**
18. **Pre-Trial/Plea Agreements**
19. **Stipulations**

20. Trial Preparation: Evidence and Witnesses

21. Members' Case

22. Sentencing Case

23. Post-Trial Duties and Administrative Actions

Commanding Officers have the discretion to modify or waive any line items or sections as appropriate for local practice. Commands are encouraged to simulate events that are not available locally to the extent practicable. Commanding Officers also have the discretion to determine that items completed in one PDS satisfy the requirements of a PDS in a subsequent rotation.

1. Preliminaries

Review, sign, and date:

Appendix 23 (Analysis of Punitive Articles) of the Manual for Courts-Martial	
NMCCA Website	
CAAF Website (Digest in particular)	
Local Court Rules	
Navy Marine Corps Trial Judiciary Uniform Rules of Court	
CNLSCINST 1300.1 [series] (First Tour Judge Advocate Program and Business Rules, particularly, section on Trial and Defense rotations)	
CNLSCINST 5800.1[series], Naval Legal Service Command (NLSC) Manual, Chapters 10 & Appendices A-1, B-1, C1; Table of Contents	
Your local Standard Organization and Regulations Manual (SORM)	
TC Only: CNLSCINST 5800.1[series], Naval Legal Service Command (NLSC) Manual, Chapters 14, 15	
DC Only: CNLSCINST 5800.1[series], Naval Legal Service Command (NLSC) Manual, Chapters 11, 12	
DC Only: DCAP Deskbook and Standard Forms	

Initial and Date:

1. NJS _____ ACCESS: Lexis.com user account name and password from your command POC.

2. _____ ACCESS/REVIEW: DCAP/TCAP SharePoint site and establish access using the instructions provided by your STC/SDC. Become familiar with its organization. Set alerts for discussions and other items. Learn their different missions/roles in assisting you as TC/DC.

3. _____ REVIEW: Standard Navy Distribution List, OPNAVINST 5400.45. Source: https://www.secnav.navy.mil/doni/sndl.aspx

4. _____ ACCESS: Obtain access to Judicial Circuit's SharePoint site.

5. _____ DISCUSS: The FTJA Business Rules as they pertain to your Trial or Defense practice.

6. _____ DISCUSS: The function of OJAG Codes 20, 30, 45, and 46. Visit their SharePoint pages as applicable.

TC Only:

1. _____ REVIEW: TCAP Trial Counsel Manual, checklist, and motions bank, located on TCAP SharePoint site.

2. _____ OBTAIN/ACCESS: Case Management System (CMS) account access. Discuss CMS operation and business rules with STC or designee.

3. _____ EXPLAIN: How to secure travel for witnesses to a court-martial to include issuing command invitation letters and subpoenas.

DC Only:

1. _____ LEARN: How requests for counsel are sent to the DSO and how cases are detailed by your DSO.

2. _____ ACCESS: CMTIS with the help of your local CMTIS Administrator. Review the CMTIS Business Rules.

3. _____ REVIEW: Defense Counsel Deskbook, Senior Officer Representation Deskbook, Motions Template Bank, Discussion Board, and Navy Defender Newsletter located on the DCAP SharePoint site.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

2. Events to Watch

Note: Personnel are strongly encouraged to observe as many sessions of court as possible as you will learn from each counsel, Military Judge, and witness you observe in court.

OBSERVATION is preferred, but not required. If no opportunity to OBSERVE, discuss line item with appropriate department personnel.

Initial and Date:

1. _____ OBSERVE: An Article 32 hearing.
2. _____ OBSERVE: A docketing session.
3. _____ OBSERVE: An arraignment.
4. _____ OBSERVE: A motions hearing.
5. _____ OBSERVE: A guilty plea with a Pre-trial Agreement (PTA) or Plea Agreement.
6. _____ OBSERVE: A contested court-martial with members.
7. _____ OBSERVE: Voir dire.
8. _____ OBSERVE: An expert witness testifying.
9. _____ OBSERVE: The accused testifying.
10. _____ OBSERVE: A child witness testifying.
11. _____ OBSERVE: A remote witness testifying via VTC or telephone.
12. _____ OBSERVE: An R.C.M. 802 conference.
13. _____ OBSERVE: An IRO Hearing.
14. _____ OBSERVE: **TC Only** - Pre-referral hearing/ex parte communications for a warrant or investigative subpoena.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

3. Ethical Obligations & Considerations

Note: Complaints against the ethical practices of another attorney are very serious matters. As a result, they should not be taken lightly. Any discussion of alleged violations of ethical rules should be discussed thoroughly with your chain of command, and only after approval, be pled in a court filing.

Review, sign, and date:

JAG Corps Rules of Professional Responsibility JAGINST 5803.1E	NJS
Your state rules of professional responsibility.	

Initial & Date:

1. _____ EXPLAIN: The rules of professional responsibility applicable when there are reasonable grounds to believe that a client is at imminent risk of self-harm.

2. _____ EXPLAIN: How the JAG Corps Rules of Professional Responsibility apply to the following ethical duties:

    a. Formation of the attorney-client relationship;
    b. Communications with a represented party;
    c. Conflicts of interest;
    d. Duty of loyalty;
    e. Duty of candor toward the tribunal;
    f. Fairness to opposing counsel;
    g. Special responsibilities of trial counsel and government counsel;
    h. Conflicts associated with representing clients;
    i. Duty of competence;
    j. Duty to communicate;
    k. Duty of diligence.

3. _____ DISCUSS: Best practices for avoiding ethical violations and for addressing potential ethical violation.

4. _____ EXPLAIN: The rules of professional responsibility applicable to attorney client privileges and the best practices to ensure maintaining the client's confidences.

5. _____ EXPLAIN: The rules of professional responsibility applicable to attorney work-product and the best practices for avoiding a breach to the privilege.

6. _____ EXPLAIN: The rules of professional responsibility related to "attorney as witness."

7. _____ REVIEW: OJAG Code 13's SharePoint site, specifically, training materials related to professional responsibility.

8. _____ EXPLAIN: Where to go for interpretation or guidance on the application of the Rules.

9. _____ EXPLAIN: The steps to take (and not to take) if you believe a fellow counsel has violated the Rules.

10. _____ EXPLAIN: Your responsibility if you believe an opposing counsel has violated the Rules.

11. _____ EXPLAIN: Under what circumstances a judge advocate may make an "extra-tribunal" statement.

12. _____ EXPLAIN: How the rules of professional responsibility pertain to non-attorneys, such as Legalmen, paralegals, civilian interns, and other support personnel.

13. _____ EXPLAIN: Your responsibilities with regard to non-attorney assistance.

14. _____ EXPLAIN: The procedure if you believe there is an actual or apparent conflict between your State Bar professional rules and the JAG Corps professional responsibility rules.

15. _____ CREATE: Your conflict-logbook for your Trial or Defense rotation. Discuss the logbook with STC or SDC, depending on your rotation, to ensure it meets departmental and JAG Corps requirements. Maintain logbook at all times and be prepared for spot-checks.

DC Only:

1. _____ REVIEW: Your command's policy/standard operating procedure on potentially suicidal clients.

2. _____ REVIEW: Your command's policies governing detail of counsel, eligibility for defense services, and use of Defense Litigation Support Specialists (DLSS) resources.

3. _____ REVIEW: Your State Bar rules regarding forming an attorney client relationship If your state rules conflict with JAGINST 5803.1, report it immediately to your SDC.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

4. Court Rules and Officer of the Court

Review, sign, and date:

NMCTJINST 5810.5[series]	
JAG/COMNAVLEGSVCCOM INST 5530.2 [series]	
Local Courtroom Security Policy and Procedures	

Initial and Date:

1. NJS_____ DEMONSTRATE: Familiarity with the Military Judges' Benchbook, familiarity with the local Rules of Court, an understanding of the docketing rules in effect in the circuit, and an understanding of the rules governing conduct of spectators in the courtroom.

2. _____ DRAFT: A Trial Management Order (TMO).

3. _____ REVIEW: A Security Risk Assessment Form (SRAF).

TC Only:

1. _____ SUBMIT: A completed docketing request to include a request for a court-martial date and arraignment.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

5. Sexual Offenses and VWAP Training

Review, sign, and date:

Articles 120 and 125, UCMJ (all versions)	NJS
JAGINST 5810.3 Navy Victim Legal Counsel Program Manual	NJS
ALNAV 061/15 Requirement to Consider A Victims Preference for Prosecution by Court Martial or Civilian Court	NJS
M.R.E. 412, 413, 414, 513, 514, 611, and 615	
DoDD 6495.01 and DoDI 6495.02	
OPNAVINST 1752.1[series] and SECNAVINST 1752.4[series]	
42 U.S.C. § 10607; 18 U.S.C. §§ 2250 et seq.; DoDD 1030.01; and DoDI1030.2	
Jacob Wetterling Act, 42 U.S.C. §§ 14071 et seq.	
Adam Walsh Act, 42 U.S.C. §§ 16901 et seq., including §§ 16913, 16918	

Initial and Date:

1. NJS_____ KNOW:

   a. Difference between "sexual act" and "sexual contact";
   b. How allegations committed before 1 October 2007 are handled;
   c. How allegations between 1 October 2007 and 27 June 2012 are handled;
   d. How allegations between 28 June 2012 and 1 January 2019 are handled;
   e. How allegations after 1 January 19 are handled;
   f. How consent and mistake of fact as to consent applies to allegations under the various versions of Article 120;
   g. Discuss what it means to be capable of consenting under MJA16;
   h. Discuss *United States v. Pease*, 75 M.J. 180 (C.A.A.F. 2016) and its effect on consent in alcohol related cases.

2. NJS_____ KNOW:

   a. Exceptions to M.R.E. 412;
   b. Notice and motion filing requirements under M.R.E. 412;
   c. Required process for a closed hearing under M.R.E. 412.

3. NJS_____ KNOW:

   a. Differences between Restricted Reporting and Unrestricted Reporting;

b. To whom a Restricted Report may be made;
c. Limitations on confidentiality of a Restricted Report;
d. What use a command, investigative agency, or counsel may make of a restricted report;
e. Difference between a SARC and VA.

4. NJS_____ DISCUSS:

a. The Victim-Advocate privilege under M.R.E. 514 and its exceptions.
b. The Psychotherapist-Patient privilege under M.R.E 513 and its exceptions.

Note: Personnel should complete the sections below in a manner that ensures that you will not be called as a witness in a case. Only civilian paralegals or legalmen may be used as "seconds" during interviews in accordance with CNLSCINST 1300.1 [series].

OBSERVATION is preferred, but not required. If no opportunity to OBSERVE, discuss line item with appropriate department personnel.

5. _____ INTERVIEWS:

a. OBSERVE: An interview or direct/cross examination of a Sexual Assault Nurse Examiner (SANE)/Sexual Assault Forensic Examiner (SAFE); _____
b. DISCUSS: How a SAFE is conducted and time windows for the collection of evidence;
c. DISCUSS: The results of a SAFE collection kit and how to introduce medical evidence into evidence at a court-martial;
d. DISCUSS: Lab results that might be present in a sexual assault case;
e. OBSERVE: Consultation with an expert witness regarding the likely testimony of an opposing expert witness; _____
f. DISCUSS: Memory impairment resulting from alcohol consumption in an alcohol facilitated sexual assault and how to address memory issues at trial;
g. EXPLAIN: Situations in which alternative (non-live) testimony of a witness may be desired by a party, and methods/options for alternative testimony. _____

6. _____ DISCUSS: How allegations committed before 1 October 2007 are handled.

7. _____ DISCUSS: How allegations committed between 1 October 2007 and 27 June 2012 are handled.

8. _____ DISCUSS: How allegations committed between 28 June 2012 and 1 January 2019 are handled.

TC Only:

_____ LEARN: About your duties under VWAP, role of TC, VWLO, VWAC, and requirements. Read OPNAVINST 5800.7A and COMNAVLEGSVCCOM INSTRUCTION 5800.4A.

_____ REVIEW: Victim preference letter regarding jurisdictional preference.

NJS_____ OBSERVE: An interview of the alleged victim in a sexual assault case.

_____ OBSERVE: TC contact a witness and an alleged victim to give a status update and conduct an interview.

_____ IDENTIFY: The state office for Crime Victim Compensation and discuss transitional compensation in the federal government.

_____ REVIEW: DD Form 2701.

_____ OBSERVE: TC provide an alleged victim a completed DD Form 2702 and explain the contents.

_____ OBSERVE: TC provide an alleged victim a completed DD Form 2703 and explain the contents.

_____ EXPLAIN: DD Form 2704 to an alleged victim or witness and determine their election to be notified.

_____ USE: The OJAG Victim Declination Letter and explain its use to an alleged victim.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

6. Non-Punitive Measures (Administrative Remedies)

Review, sign, and date:

JAGMAN, Chapter 1, § 0105	NJS
SJA Update 09-11 (NPLOC vs. LOI)	NJS
R.C.M. 306(c)(2)	
JAGINST 5800.7(series) (JAGMAN), Chapter 1, § 0102	
MILPERSMAN 1611-010	
MILPERSMAN 1611-020	
MILPERSMAN 1450-010	
MILPERSMAN 1070-170	
MILPERSMAN 1616-010	
MILPERSMAN 1616-030	
MILPERSMAN 1616-040	
MILPERSMAN 5812-010	
MILPERSMAN 1430-020	
MILPERSMAN 1160-020	
NAVADMIN 030/12	

Initial and Date:

1. NJS_____ UNDERSTAND: The limits on Extra Military Instruction (EMI).

2. NJS_____ KNOW: Who may assign EMI.

3. NJS_____ DISCUSS: The reporting requirements when a decision is made to impose NJP on an officer and when NJP is complete.

DC Only:

1. _____ REVIEW: A Page 13 issued to one of your PERSREP clients.

2. _____ REVIEW: An EMI Order for compliance with Navy Regulations.

3. _____ ADVISE: A PERSREP client regarding a Non-Punitive Letter of Caution (NPLOC). Discuss the implications of receiving one.

4. _____ ADVISE: A PERSREP client regarding a Letter of Instruction (LOI). Discuss the implications of receiving one.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

7. Complaints/Inquiries

Review, sign, and date:

Article 138, UCMJ	NJS
Article 1150, U.S. Navy Regulations (1990)	NJS
JAGMAN, Chapter 3	NJS
Article 0820, U.S. Navy Regulations (1990)	
SECNAVINST 5370. 5(series), "Department of the Navy Hotline Program"	
SECNAVINST 5370.7(series), "Military Whistleblower Reprisal Protection"	
DOD Directive 7050.6, "Military Whistleblower Protection"	
SJA Update 10-09 (Complaints of Wrong)	

Initial and Date:

1. NJS_____ KNOW: The difference between an Article 138 and 1150 complaint.

2. _____ DESCRIBE: Administrative differences between Article 138 and Article 1150 complaints.

3. _____ REVIEW: The Navy Investigator General (IG) web page and the procedures and points of contact for making an IG Complaint.

DC Only:

1. _____ REVIEW: Article 138 complaint (or an associated request for redress) drafted by a PERSREP client. Discuss the possible outcomes of that complaint.

2. _____ REVIEW: Article 1150 complaint drafted by a PERSREP client. Discuss the possible outcomes of that complaint.

3. _____ DISCUSS: With a PERSREP client how to make an IG complaint and the possible outcomes of that complaint.

4. _____ DISCUSS: With a PERSREP client the concept of reprisal and the options a client has if the client is subject of reprisal or feels unsafe after making an IG or other official complaint.

5. _____ DISCUSS: With a PERSREP client how to make a Congressional Complaint and the possible outcomes of that complaint.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

8. Non-Judicial Punishment

Review, sign, and date:

ARTICLE 15, UCMJ	NJS
PART V, MCM	NJS
JAGMAN, Chapter 1 (Sections 0106-0119)	NJS
JAGMAN, Chapter 1 (Section 0124)	NJS
MILPERSMAN 1611-010	NJS
MILPERSMAN 1626-020	NJS
MILPERSMAN 1626-030	NJS
MILPERSMAN 5812-010	NJS
NAVADMIN 373/11	NJS

Initial and Date:

1. NJS_____ DESCRIBE: Who has NJP authority and the limitations, if any, on their authority.
2. NJS_____ KNOW: The requirements for self-reporting arrests and convictions and the restrictions on the use of a self-report for disciplinary purposes.
3. _____ KNOW: The time limit on imposing NJP for a specific offense.
4. _____ EXPLAIN: The effect state court adjudications have on the ability of a command to administer NJP for the same acts.
5. _____ KNOW: The collateral administrative consequences of NJP for enlisted.
6. _____ KNOW: The collateral administrative consequences of NJP for officers.
7. _____ EXPLAIN: How prior NJPs can be used at subsequent courts-martial, both for same offenses and for different offenses

DC Only:

1. _____ DESCRIBE: To a PERSREP client how NJP is conducted, generally.
2. _____ EXPLAIN: To a PERSREP client their rights at NJP, *Booker* rights, and the standard of proof at NJP.
3. _____ EXPLAIN: To a PERSREP client lawful punishments and limitations at NJP.
4. _____ EXPLAIN: To a PERSREP client the NJP appeal grounds and process.

5. _____ REVIEW: NJP appeal drafted by a PERSREP client.

6. _____ EXPLAIN: To a PERSREP client the process and criteria for a NJP Set Aside.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

9. Enlisted Administrative Separations

Review, sign, and date:

MILPERSMAN 1910-100	NJS
DoD Instruction 1332.14 (Enlisted Administrative Separations)	NJS
MILPERSMAN 1910-233	NJS
MILPERSMAN 1910-210	NJS
MILPERSMAN 1910-212	NJS
MILPERSMAN 1910-302	NJS
MILPERSMAN 1910-400 through 410 and 414	NJS
MILPERSMAN 1910-500 through 518	NJS
MILPERSMAN 1910-600	NJS
MILPERSMAN 1910-700	NJS
MILPERSMAN 1910-702	NJS
MILPERSMAN 1910-704	NJS
MILPERSMAN 1910-106	NJS
MILPERSMAN 1910-140	NJS
MILPERSMAN 1910-142	NJS
MILPERSMAN 1910-144	NJS
MILPERSMAN 1910-146	NJS
MILPERSMAN 1910-152	NJS
MILPERSMAN 1910-170	NJS
MILPERSMAN 1910-120	NJS
MILPERSMAN 1910-122	NJS
10 USC § 1407 (Retirement Pay Determination)	
SECNAVINST 5300.28(series), Military Substance Abuse Prevention and Control	
OPNAVINST 5350.4 (series), Navy Alcohol and Drug Abuse Prevention and Control	
Navy Urinalysis Coordinators (UPC) Handbook	
MILPERSMAN 1600-100	
MILPERSMAN 1910-226	

Initial and Date:

1. NJS_____ KNOW: The limitations on administratively separating a Sailor for conduct from a prior enlistment.

2. _____ EXPLAIN: The difference between Convening Authority and Separation Authority.

3. _____ EXPLAIN: The required board composition.

4. _____ EXPLAIN: Whether a Sailor can be subject to ADSEP proceedings past their End of Active Obligated Service (EAOS).

5. _____ EXPLAIN: Lost Time and how it may affect a Sailor's EAOS.

6. _____ UNDERSTAND: The process of retirement grade determinations.

DC Only:

1. _____ COUNSEL: The Respondent about rights concerning ADSEP. In an appropriate case, counsel a Respondent about rights to separation pay.

2. _____ COUNSEL: A Respondent regarding the distinction between ADSEP and court-martial.

3. _____ DESCRIBE: Mandatory v. Discretionary processing to a client.

4. _____ COUNSEL: A Respondent regarding Notification v. Board Procedure.

5. _____ EXPLAIN: To the Respondent the available Characterizations of Service and their implications for VA benefits and civilian employment.

6. _____ EXPLAIN: To the Respondent Conditional Waivers and whether or not the waiver is available and/or appropriate in their case.

7. _____ EXPLAIN: To the Respondent the situations in which PERS may take action contrary to the Board's recommendations.

8. _____ DRAFT: A letter of deficiency (LOD)

9. _____ DISCUSS: With the Respondent the Discharge Review Board and Board of Corrections for Naval Records procedures and the likelihood of getting his/her discharge upgraded.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

10. Advocacy Skills – ADSEPs

Initial and Date:

1. NJS_____ DISCUSS & EVALUATE: Your theme and theory of the case. Know what evidentiary rules apply and how to enforce them.

2. NJS_____ CONDUCTING VOIR DIRE:

   a. PREPARE: A voir dire of board members;
   b. DEMONSTRATE: A challenge for cause against a board member; and
   c. KNOW: The process for removing a board member for cause.

3. NJS_____ CONDUCTING AN OPENING STATEMENT:

   a. PREPARE: An opening statement;
   b. DELIVER: An opening statement to fellow Trial/Defense Counsel in front of your STC/SDC or designee;
   c. DEMONSTRATE: The use of demonstrative aides and evidence during an opening statement; and
   d. DELIVER: An opening statement at an ADSEP board.

4. NJS_____ PREPARE & CONDUCT: A thorough practice session of your entire presentation of evidence in front of your STC/SDC or designee.

5. NJS_____ THE CASE-IN-CHIEF:

   a. CONDUCT: A direct examination and re-direct examination of a witness;
   b. CONDUCT: A cross examination and re-cross examination of a witness;
   c. USE: Real evidence during a direct examination;
   d. USE: Real evidence during a cross examination;
   e. USE: Demonstrative evidence during a direct examination;
   f. USE: Demonstrative evidence during a cross examination; and
   g. MAKE: An appropriate objection to the Senior Member during any witness examination.
   _____

6. NJS_____ CONDUCTING A CLOSING STATEMENT:

   a. PREPARE: A closing statement;
   b. DELIVER: A closing statement to fellow Trial/Defense Counsel in front of your STC/SDC or designee;
   c. DEMONSTRATE: The use of demonstrative aides and evidence during a closing statement; and
   d. DELIVER: A closing statement at an ADSEP board.

7. NJS_____ KNOW: When it may be appropriate to object during a closing argument.

8. NJS_____ DELIVER:

   a. A closing argument at an ADSEP board; and
   b. A closing argument using demonstrative aides, real evidence, or both. _____

9. _____ DEMONSTRATE: To fellow counsel at a thorough practice session in front of your STC/SDC or designee:

   a. The use of demonstrative aides during a closing argument; and _____
   b. The use of real evidence during a closing argument. _____

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

11. Pre-Trial/Case Screening

Review, sign, and date:

JAGINST 5803.1 [series]	NJS
Article 25, UCMJ	NJS
R.C.M. 304, 305	NJS
U.S. Army JAG School Criminal Law Deskbook – Pleadings	
MILPERSMAN 1910-208	

Initial and Date:

1. NJS_____ CALCULATE: An accused's period of pre-trial restraint, as applicable.

2. NJS_____ EXPLAIN: The rules regarding pre-trial restraint pursuant to R.C.M. 304 and 305.

3. NJS_____ UNDERSTAND: How this may impact pre-trial negotiations and the court-martial process.

4. NJS_____ PREPARE: A proof matrix which analyzes all supported charges and specifications.

5. NJS_____ REVIEW: A convening order and explain its requirements. Review Article 25(d)(2), UCMJ for qualifications.

6. NJS_____ IDENTIFY: The steps required in the preferral process.

7. NJS_____ IDENTIFY: The steps required in the referral process.

TC Only:

1. NJS_____ READ: A Report of Investigation (ROI) and identify areas for further investigation. Specifically execute the following steps and initial upon completion:

   a. Ensure all exhibits are present. _____
   b. Contact the RA to ensure that nothing is missing. _____
   c. Secure all interview discs/Cellebrite reports/etc. mentioned in ROI. _____
   d. Assess whether the investigation is closed or ongoing (determine whether a request to NCIS to conduct further investigation, should be explored). ____

2. NJS_____ From a given set of charges and specifications:

   a. IDENTIFY: Any drafting/pleading errors contained in the sample. _____
   b. DISTINGUISH: Between fatal (material) and non-fatal (immaterial) defects in specifications. Give an example. _____
   c. DISTINGUISH: Between fatal (material) and non-fatal (immaterial) variance in specifications. Give an example. _____

3. NJS_____ DRAFT: A complete charge sheet, including all appropriate charges and specifications. Use the sample specifications in the MCM and the elements and instructions in the Military Judges' Benchbook. Consult the relevant chapter(s) of the U.S. Army JAG School Criminal Law Deskbook Volume II – Crimes and Defenses.

4. NJS_____ IDENTIFY: The purpose of block 13, receipt by summary court-martial officer.

5. NJS_____ IDENTIFY: The remedies available and the applicable deadlines for correction of pleading defects.

6. NJS_____ SCREEN: A completed DD Form 458 Charge Sheet (all blocks) utilizing the checklist provided by your Senior Trial Counsel.

7. _____ CONDUCT: Pre-screening of a case using TCAP Case Screening Guidelines – identify possible charges, think about charging theories, forum, CA goals, potential costs and proposed dispositions of a case – prepare to brief the CA on case.

8. _____ DOCUMENT: An accused's End of Active Obligated Service (EAOS).

9. _____ EXPLAIN: How to involuntarily extend an accused past his or her EAOS using a "Legal Hold" and how this may impact the administrative separation process and pre-trial negotiations.

10. _____ ADMINISTER: The oath to an accuser qualified to prefer charges.

11. _____ UNDERSTAND: Procedures for release of information to Public Affairs Officers or to the media at various stages of process; Art. 32 hearing versus SPCM/GCM (post-referral).

12. _____ UNDERSTAND: Your Trial Shop's process for drafting Prosecution Merits Recommendations (PMRs) and how those recommendations are shared with convening authorities.

DC Only:

1. _____ KNOW: How counsel are detailed to cases within your DSO.

2. _____ UNDERSTAND: An accused's End of Active Obligated Service (EAOS) and how it can impact case strategy.

3. _____ EXPLAIN: How an accused can be involuntarily extended past his or her EAOS using a "Legal Hold" and how this may impact the administrative separation process and pre-trial negotiations.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

12. Witness Interviews

Review, sign, and date

Article 46, UCMJ	NJS
JAGINST 5803.1[series]	NJS
DC Only: DCAP Deskbook Chapter 6	

Initial and Date:

1. NJS_____ REVIEW: statement(s) of an alleged sexual assault victim with a core counsel.

2. NJS_____ PREPARE: An outline for a witness interview of an alleged victim in a sexual assault case with TC/detailed Defense Counsel.

3. NJS_____ OBSERVE: Preparing a client (DC) or alleged victim (TC) to testify in a contested case.

4. NJS_____ PREPARE: An outline for a witness interview for an upcoming fact witness in a contested court-martial and discuss with TC/detailed Defense Counsel.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

13. Speedy Trial

Review, sign, and date:

R.C.M. 707	NJS
Article 10, UCMJ	NJS
Barker v. Wingo, 407 U.S. 514 (1972)	
CAAF Opinion Digest – Right to Speedy Trial	

Initial and Date:

1. _____ DISCUSS: With STC/SDC:

   a. Three types of speedy trial requirements (regulatory, statutory and constitutional); _____
   b. 5th Amendment considerations with respect to Speedy Trial. _____
   c. 6th Amendment considerations with respect to Speedy Trial _____
   d. The legal standards for speedy trial under R.C.M. 707 and Article 10, UCMJ; _____
   e. Identify speedy trial/re-sentencing requirements on a remanded case ;____
   f. Triggering events for each type of speedy trial requirement to include personal jurisdiction; _____
   g. What stops, and what does not stop, the speedy trial clock; _____
   h. Milestone events with regard to speedy trial; _____
   i. "Excludable delay" and in what form it should be; ____
   j. Discuss who can request excludable delay and for what;_____
   k. Need for accurate accounting of speedy trial triggering events and excludable delays; _____
   l. Identify whether a speedy trial motion under R.C.M. 707 or Article 10 can be waived.
   m. Identify who needs to be notified regarding documentation with respect to Speedy Trial in a pre-trial confinement or restriction case; _____

2. _____ COMPLETE: A daily activity log on a case.

3. _____ DRAFT: An excludable delay request (DC) or endorsement explicitly attributing delay to defense (TC).

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

14. Discovery

Review, sign, and date:

R.C.M. 701 and 914	NJS
M.R.E. 304(d), 312, 321, 403, 404(b), 413, 414, 507, 609(b), 612, 703, and 807	NJS
Brady v. Maryland, 373 U.S. 83 (1963)	NJS
JAGINST 5813.1[series]	NJS
United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991)	NJS
Jencks Act, 18 U.S.C. § 3500	NJS
United States v. Agurs, 427 U.S. 97 (1976)	
Weatherford v. Bursey, 429 U.S. 545 (1977)	
United States v. Lucas, 5 M.J. 167 (C.M.A. 1978)	
United States v. Garries, 22 M.J. 288 (C.M.A. 1986), *cert. denied*, 479 U.S. 985 (1986)	
United States v. Simmons, 38 M.J. 376 (C.M.A. 1993)	
United States v. Briggs, 48 M.J. 143 (C.A.A.F. 1998)	
Goldberg v. United States, 425 U.S. 94 (1976)	
DoD Health Information Privacy Regulation (DoD 6025.18-R)	

Initial and Date:

1. NJS_____ DISCUSS: Pre-referral investigative tools.

2. _____ EXPLAIN: The standardized electronic discovery process used in your area of practice.

3. _____ EXPLAIN: The difference between discovery under R.C.M. 701 and production under R.C.M. 703.

4. _____ EXPLAIN: Which files the government must review to fulfill its *Brady* and *Gigilo* obligations.

5. _____ EXPLAIN: Obligations under Jencks Act and R.C.M. 914.

6. _____ EXPLAIN: *Henthorn, Jencks and Giglio* requests and how that information may be obtained.

7. _____ EXPLAIN: The receipt of discovery procedures in your local circuit.

8. _____ EXPLAIN: How to handle evidence in a child pornography case. Review JAG/CNLSINST 5814.1D.

TC Only:

1. _____ DRAFT: A *Henthorn* request to an agency. Explain the differences between obtaining information from military law enforcement vice state law enforcement.

2. _____ RESPOND: To a Defense discovery request indicating what material has been provided to the Defense and what actions the Government has taken regarding any other requests.

DC Only:

1. _____ DRAFT: A discovery request.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

15. Article 32 Preliminary Hearings

Review, sign, and date:

Articles 32 – 35 , 38, UCMJ	
R.C.M. 405 and Analysis of R.C.M. 405	

Initial and Date:

1. _____ EXPLAIN: How to secure an Article 32 preliminary hearing officer and what qualifications the preliminary hearing officer should possess.

2. _____ DISCUSS: GCMCA policy regarding conditional waivers, if any.

3. _____ EXPLAIN: Which M.R.E.s apply at an Article 32 hearing.

4. _____ EXPLAIN: The rules regarding alternatives to testimony at an Article 32 hearing.

5. _____ EXPLAIN: Witness availability issues for an Article 32 hearing and government's lack of authority to subpoena witnesses for an Article 32 hearing.

6. _____ EXPLAIN: The procedures for inviting a civilian witness to an Article 32 hearing.

7. _____ EXPLAIN: The procedures for inviting an alleged victim to an Article 32 hearing.

8. _____ EXPLAIN: The difference between a conditional and an unconditional waiver of an Article 32 hearing.

TC Only:

1. _____ PREPARE: Article 32 script.

2. _____ DRAFT: A Preliminary Hearing Officer (PHO) appointing letter.

3. _____ REVIEW: A PHO report and discuss with your STC.

4. _____ ASSIST: The accused's command in drafting an endorsement to the GCMCA.

5. _____ DEMONSTRATE: A working knowledge of the court reporting equipment to record the Article 32 proceedings.

DC Only:

1. _____ OBSERVE: Client advice on the pros and cons of proceeding to an Article 32 hearing or choosing to submit a waiver.

2. _____ PREPARE: Written objections and/or comments to an Article 32 hearing.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

16. Arraignment and Notices

Review, sign, and date:

Army Trial Guide	
R.C.M. 905, 906, and 907	
M.R.E. 103 and 104	
R.C.M. 108, 308, 405, 602(discussion), 701(a), 702(e), 703(d), 706(a), 910(f)(2), and 914	
M.R.E. 202, 301(c)(2), 302, 311, 412, 505, 506, 507, 514, 613, and 902	
Article 37, UCMJ	
U.S. Army JAG School Criminal Law Deskbook - Motions (Volume III)	
U.S. Army JAG School Criminal Law Deskbook - Unlawful Command Influence (Volume II)	

Initial and Date:

1. NJS_____ KNOW: What an arraignment is and why it is significant.

2. _____ KNOW: What information must be provided to the defense prior to arraignment.

3. _____ KNOW: The requirements in the Uniform Rules and local rules for motions, including form and filing deadlines.

4. _____ KNOW: What documents, cases, or other matters should be attached to all motions:

   a. The evidentiary requirements for motions generally. Discuss the distinction between motions that raise only matters of law versus motions that raise matters of both fact and law. _____
   b. Discuss a proffer and whether it constitutes evidence. _____
   c. Demonstrate what evidence (witnesses, documents, etc.) is required to support your motion and your plan for getting that evidence admitted. _____

5. _____ OBSERVE: Core counsel prepare a witness for testimony during a motions hearing.

6. _____ EXPLAIN: A *Daubert* hearing and when it is used.

7. _____ EXPLAIN: The actions that may constitute unlawful command influence (UCI) and how UCI can impact a court-martial.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

17. Motions and Objections

Review, sign, and date:

Your local rules of Court, paying particular attention to the sections on motions practice.	
U.S. Army JAG School Criminal Law Deskbook - Motions (Volume III)	

Initial and Date:

1. _____ REVIEW: The Notice obligations under:

   a. R.C.M. 701 (a)(4) _____
   b. R.C.M. 701(b); _____
   c. R.C.M. 703(d) _____
   d. R.C.M. 903(c)(1) _____

2. _____ DRAFT:

   a. A motion for review by the SDC /STC; _____
   b. Proposed findings of fact and conclusion of law for the motion for review by the SDC /STC. _____

3. _____ LIST: The issues that *must* be raised by defense counsel before entering a plea, R.C.M. 905(b).

4. _____ DESCRIBE: What defense counsel must do to preserve issues with a conditional plea, how conditional pleas are different than non-conditional pleas, who must accept them, and what issues are proper for conditional pleas.

5. _____ LIST: The non-waivable motions or objections.

6. _____ MOTIONS *in limine*:

   a. Explain the significance of a motion *in limine*; _____
   b. Provide two (2) examples of issues that would be appropriate for motions *in limine*. _____
   c. Discuss when motions *in limine* can be filed;_____

7. _____ KNOW: The effect that a tentative ruling or the military judge's failure to rule on a motion (*in limine* or otherwise) or objection has on whether the issue is preserved.

8. _____ KNOW: What an objection must contain – at a minimum – to properly preserve an issue. Note: some motions and objections must contain more, depending on the issue.

9. _____ KNOW: How to preserve a challenge for cause, R.C.M. 912(f)(4).

10. _____ KNOW: How to preserve a *Batson* challenge.

11. _____ KNOW: How to preserve issues that arise during an 802 conference.

12. _____ KNOW: How a tactical decision by the DC may waive an issue that was properly raised. Give an example of a strategic reason not to raise a proper objection.

13. _____ KNOW: How to preserve an issue relating to an Article 32 investigation.

14. _____ REVIEW: Procedures to request a Government appeal under R.C.M. 908 including points of contact at Navy TCAP and Code 46.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

18. Pre-Trial/Plea Agreements

Review, sign, and date:

Article 58 and 76, UCMJ	NJS
R.C.M. 811	NJS
MILITARY EVIDENTIARY FOUNDATIONS §12-2 (Also required for Core Competencies 12, Stipulations)	NJS
JAGMAN Section 0152	
R.C.M. 1109	
United States v. Bertelson, 3 M.J. 314 (C.M.A. 1977)	
THE LAUTENBERG AMENDMENT, 18 U.S.C. § 921-22 AND DEPARTMENT OF DEFENSE FORM (DD) 2760.	
Military Judges' Benchbook 2-2-6 https://www.jagcnet.army.mil/ebb/index.html	
U.S. Army JAG School Criminal Law Deskbook – Pleas and Pretrial Agreements (Volume II)	

Initial and Date:

1. NJS_____ CONDUCT: Plea Agreement negotiations with the assigned trial/defense counsel on a case on which you are assisting.

2. NJS_____ DRAFT: A stipulation of fact, using the Military Judges' Benchbook and the MCM that addresses all elements of Articles to which you are entering into a Stipulation of Fact.

3. NJS_____ OBSERVE: The use of a Stipulation of Fact at trial.

4. NJS_____ DISCUSS: Segmented sentencing and negotiating a sentencing range.

5. _____ EXPLAIN: The procedures for a vacation hearing by the CA (*see* Article 72, UCMJ and R.C.M. 1109).

6. _____ DISCUSS:

   a. Process of negotiating a plea agreement; _____
   b. Jurisdictional sentencing limits of SCM, SPCM, and GCM; _____
   c. Terms and provisions which must be included in a written plea agreement; _____
   d. Terms and conditions which are prohibited in a plea agreement; _____
   e. Under what circumstances either party may withdraw from a plea agreement; _____
   f. What is and what are the pitfalls of a "*sub rosa*" agreement?; _____
   g. What is a conditional plea? What are the ramifications of entering into one?; _____

h. What plea agreement terms can be used to benefit the victim and/or the accused's dependents?; _____ and
i. Why an accused's EAOS should be considered during plea agreement negotiations? ___

7. _____ DRAFT: A plea agreement with the following provisions using the online plea agreement template:

a. Waiver of administrative separation board; _____
b. Request trial by military judge alone; _____
c. Complete restitution; _____
d. Cooperate in investigation; _____
e. Identify other criminals and/or criminal activities; _____
f. Testify as a witness in other case(s); _____
g. Waiver of a specific motion; _____
h. Explicit, specific waiver of Article 13, UCMJ motion; _____
i. Enter into a stipulation of fact with the government; _____
j. Not request witnesses at government expense; _____
k. Not object to specific pre-sentencing evidence on specific grounds; _____
l. A plea to an LIO, including drafting language for the LIO charge; _____
m. A plea by exceptions and substitutions; _____
n. Withdraw or dismiss charges based on pleas to LIO; _____
o. Waiver of forfeiture and reduction; _____
p. Waiver of statute of limitations; _____ and
q. Request for deferral and waiver of forfeitures in favor of dependents. _____

8. _____ KNOW: The issues surrounding sex offender registration in plea agreements as addressed in *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006).

9. _____ OBSERVE: The STC/SDC or TC/DC conduct plea agreement negotiations.

10. _____ DISCUSS: A SILT, when it is applicable, how it is drafted, and when it can be used.

DC Only

1. _____ KNOW: Advice requirements and best practices regarding immigration status, gun ownership, and other collateral consequences of a conviction resulting from a Plea Agreement.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

19. Stipulations

Review, sign, and date:

R.C.M. 811	NJS
M.R.E. 410	
MILITARY EVIDENTIARY FOUNDATIONS §12-2	
United States v. Bertelson, 3 M.J. 314 (C.M.A. 1977)	
Military Judges' Benchbook Ch. 2, § VII, para 2-7-25	

Initial and Date:

1. NJS_____ KNOW:

   a. Distinguish stipulations of fact from stipulations of expected testimony;
   b. What should/should not be in a stipulation of fact?;
   c. Proper and authorized uses at trial of a stipulation of fact or a stipulation of expected testimony; and
   d. Judicial notice.

2. _____ KNOW: Are stipulations required in a guilty plea case? Is there any way the accused's stipulation may be used against the accused if the government withdraws from the plea agreement?

3. _____ DISCUSS: The advantages/disadvantages of using stipulations in other contexts (contested case or at sentencing)? What are the accused's confrontation rights as to witnesses and other evidence? Discuss situations where it may be helpful to utilize a stipulation, and scenarios where it may not be beneficial.

TC Only:

1. _____ DRAFT: A stipulation of fact and a stipulation of expected testimony for a case with which you are assisting a Trial Counsel

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

20. Trial Preparation: Evidence and Witnesses

Review, sign, and date:

M.R.E. 607, 608, 609, 612, and 613	NJS
Military Evidentiary Foundations Guide	NJS
R.C.M. 703(e)(2)	
R.C.M. 914A and 914B	

Initial and Date:

1. NJS_____ PREPARE: The foundation to admit a document.

2. NJS_____ EXPLAIN: How to present a piece of self-authenticating evidence (i.e. blue ribbon copy of service record) and when it can be used.

3. NJS_____ EXPLAIN: How to conduct a presentation of documentary evidence with witness authentication.

4. NJS_____ OBSERVE: Preparing a client (DC) or alleged victim (TC) to testify in a contested case, including for direct and cross-examination.

5. _____ EXPLAIN: The procedure for issuing subpoenas to civilian witnesses and invitational orders to witnesses not subject to subpoena pursuant to R.C.M. 703(e)(2).

6. _____ PREPARE: A response to a defense request for an expert witness (TC) or a request for an expert witness (DC).

TC Only:

1. _____ DRAFT: A Subpoena Duces Tecum to obtain documentary evidence and discuss how it can be used. Discuss the difference between using a subpoena and obtaining a warrant, and limitations of each.

2. _____ DRAFT: A preservation request for documentary evidence or electronic/content information, such as text message, email, social media posts.

3. _____ DRAFT: A subpoena for a witness.

DC Only:

1. _____ DRAFT: A witness production request.

2. _____ DRAFT: A request for the production of evidence.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

21. Case (Members)

Review, sign, and date:

R.C.M. 913	
R.C.M. 908	
R.C.M. 919	

Initial and Date:

1. NJS_____ REVIEW: The requirements for a proper Convening Order and amendments to a Convening Order, focusing on member selection.

2. NJS_____ REVIEW: The members' questionnaires selected by the Convening Authority.

3. NJS_____ PREPARE: Group and individual voir dire of members.

4. NJS_____ EXPLAIN: The challenge process. UNDERSTAND the difference between challenges based upon implied bias and actual bias. REVIEW quorum requirements necessary for SPCM or GCM.

5. _____ PREPARE: Members' Findings Instructions and a Findings worksheet.

6. _____ READ: An existing record of trial where rebuttal evidence was properly submitted.

TC Only:

1. _____ PREPARE and UNDERSTAND: The trial script for empaneling members.

2. _____ OBSERVE/DISCUSS WITH STC: The presentation of rebuttal evidence.

3. _____ THE CASE-IN-CHIEF

   a. _____ EXPLAIN: How to respond to a defense motion under R.C.M. 917 at the conclusion of the government's case. Know the standard of proof for this motion and whether or not the government can reopen the case.

RECOMMENDED_____ DATE_____
(PDO/Branch/OIC/Department Head)

22. Sentencing Case

Review, sign, and date:

R.C.M. 1001	NJS
R.C.M. 1001A, 1002, 1003	NJS
R.C.M. 1001(g)	NJS
Military Judges' Benchbook Judge Alone Sentencing and Members Sentencing https://www.jagcnet.army.mil/ebb/index.html	NJS
Chapter X of the MCM	
JAGMAN Section 0141	
United States v. Holt, 27 M.J. 57 (C.M.A. 1988)	
United States v. Nourse, 55 M.J. 229 (C.A.A.F. 2001).	
United States v. Marsh, 70 M.J. 101 (C.A.A.F. 2011); *United States v. Schroder,* 65 M.J. 49 (C.A.A.F. 2007).	
U.S. Army JAG School Criminal Law Deskbook – Findings and Sentencing (Volume III)	
DC Only: DCAP Deskbook Chapter on Sentencing	

Initial and Date:

1. NJS_____ EXPLAIN: What types of evidence can and cannot can be used as evidence in aggravation.

2. NJS_____ DISCUSS: The differences between Extenuation and Mitigation evidence.

4. NJS_____ EXPLAIN: How and when the rules of evidence may be relaxed and the impact of doing so. Give an example of when it would be advantageous not to relax the rules of evidence.

5. _____ OBSERVE: A presentencing phase of a court-martial and argument on sentence.

6. _____ KNOW: Local confinement facility requirements for an accused convicted at court-martial.

7. _____ ASSIST: Preparation of a pre-sentencing case.

8. _____ ASSIST: Preparation of a sentencing argument.

DC Only:

1. _____ REVIEW: A Post-Trial Rights Advisement Form.

2. _____ OBSERVE: A client being advised on post-trial and appellate rights.

RECOMMENDED_____ DATE_____
(PDO/Branch/ OIC/Department Head)

23. Post-Trial Duties and Administrative Actions

Review, sign, and date:

Articles 54, 57, 60, and 65 UCMJ	
United States v. Moreno, 63 M.J. 135 (C.A.A.F. 2006)	
CNLSCINST 5800.4 [series], paragraph h.(11)	

Initial and Date:

1. _____ REVIEW/DISCUSS: JAG/CNLSC 5814.1B – Post-Trial Processing for cases referred before 1 Jan 19.

2. _____ REVIEW/DISCUSS: JAG/CNLSC 5814.1D – Post-Trial Processing for cases referred to after 1 Jan 19.

DC Only:

1. _____ DISCUSS: Submitting clemency as a defense counsel.

2. _____ DISCUSS: The procedure and appropriate basis for making a post-trial motion.

3. _____ DISCUSS: How to review the Report of Court Martial Results as well as the CA's Action and Entry of Judgment.

4. _____ DISCUSS: Submitting clemency as a defense counsel.

5. _____ DISCUSS: Submitting a Petition for Review of a Conviction Under Article 69

6. _____ KNOW: The process for assignment of Appellate Defense Counsel.

TC Only:

7. _____ OBSERVE: A TC prepare post-trial paperwork and conduct post-trial notifications including VWAP.

8. _____ PREPARE: A Report of Results of Trial/Statement of Trial Results (MJA16) for STC review and signature by the military judge.

9. _____ COMPLETE: A Confinement Order.

10. _____ ASSEMBLE: All required paperwork that must accompany an accused to the brig.

11. _____ DISCUSS: Preparing the Entry of Judgement.

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

TRIAL OR DEFENSE COUNSEL

RECOMMENDED_____ DATE_____
(PDO/Branch/Department Head)

I CERTIFY THAT_____ HAS COMPLETED THE PROFESSIONAL DEVELOPMENT STANDARDS REQUIRED OF A TRIAL/DEFENSE COUNSEL.

_____ DATE_____
Commanding Officer
[Command]

[Once complete, command retains a copy of this page and the original goes to Officer for retention]