

5. POST TRIAL MATTERS

5.A. PREPARATION OF RECORDS OF TRIAL [ROT]

5.A.1. General and Special Courts-Martial

5.A.1.a. Verbatim Records of Trial [ROT]

A complete and verbatim record of trial [ROT] shall be prepared in certain general and special courts-martial as required by Article 54, UCMJ, RCM 1103, and Appendix 14, MCM (except as modified herein), and the orders of the trial court. When a verbatim ROT is prepared, the trial counsel shall retain or cause to be retained any notes or recordings from which the ROT was prepared until such time as the conviction is final under RCM 1209(a). For disposition of records, see section 5.H below.

5.A.1.b. Summarized ROT

With the concurrence of the responsible SJA and the military judge presiding over the case, a summarized ROT may be prepared in lieu of a verbatim ROT, so long as a verbatim ROT is not required. Appendix 13, MCM shall be used as a guide when preparing a summarized ROT. When a summarized ROT is prepared, the trial counsel shall retain or cause to be retained any notes or recordings from which the ROT was prepared until such time as the conviction is final under RCM 1209(a). For disposition of records, see section 5.H below.

5.A.1.c. Acquittals and Findings of Not Guilty

At the conclusion of a court-martial resulting in an acquittal, finding of not guilty by reason of lack of mental responsibility, or termination of the proceedings prior to findings as to all charges and specifications, there is no need to prepare either a summarized or verbatim ROT. Only the requirements set forth in RCM 1103(e) must be met. The trial counsel's notes, reporter's notes, and recordings shall be retained for three years from the date the trial is adjourned. At that time, such notes, recordings, and local copies of the ROT (if prepared) are considered non-record material and may be destroyed. If the accused is found not guilty by lack of mental responsibility and subsequently placed in the care of a Department of Justice [DOJ] facility in accordance with procedures agreed to between the Coast Guard and Federal Bureau of Prisons, there may be a requirement to

create an abbreviated ROT for administrative purposes. In such instances, the servicing legal office should contact Commandant (G-LMJ) for current guidance.

5.A.1.d. Manner of Recording Proceedings

The preferred method for recording trial proceedings is by audio tape recorded by a qualified Coast Guard court reporter, civilian contractor court-reporter, or qualified court-reporter from another armed service. The methods set forth in RCM 1103(j)(1) and (3), which allow for video tape, audio tape or similar method of recording without the presence of a certified court reporter may not be used in the Coast Guard without prior authorization from Commandant (G-LMJ).

5.A.1.e. Trial Counsel Responsibilities in the Immediate Aftermath of Trial

(1) Report of Results of Trial

After final adjournment of the court-martial, the trial counsel shall promptly notify the accused's commanding officer, the convening authority, and, if appropriate, the officer-in-charge of the confinement facility of the findings and sentence. [See, RCM 1101.] Enclosure (18a) is a sample Report of Results of Trial. Trial counsel shall also provide a copy of the Report or Results of Trial to the defense counsel, military judge, servicing PERSRU for the accused and, if CGIS was involved in any aspect of the case, to the servicing CGIS office.

(2) Cases Resulting in Adjudged or Automatic Forfeitures or Adjudged Reduction in Pay Grade

In all cases resulting in adjudged forfeitures or reduction in pay grade or administrative forfeitures compelled by operation of Article 58b, UCMJ, trial counsel shall include in the Results of Trial letter required by RCM 1101(a), a statement substantially as follows:

Adjudged and/or automatic forfeitures, under Article 58b, UCMJ, and/or adjudged reduction in pay grade will be effective (*effective date*), unless they are deferred or waived by the convening authority.

(3) Confinement Order

The trial counsel must be familiar with the brig rules regarding admitting confinees. A sample confinement order (post-trial) can be found at enclosure (18j).

5.A.2. Preparation, Arrangement, and Authentication of ROT

In the preparation of both verbatim and summarized ROTs, the preparation, arrangement, and authentication of ROTs and allied papers, to the extent possible, shall be in accordance with RCM 1103, Appendices 13 and 14, MCM, and the rules contained in this section. A helpful checklist to assist the trial counsel and legal staff prepare the ROT is found at enclosure (18c).

5.A.2.a. Charge Sheets

The original charge sheet should be inserted into the original ROT in lieu of copying into the ROT the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit, and the reference for trial. When minor changes to the charge sheet are made after arraignment, any such changes must be fully detailed in the ROT [*see*, RCM 603].

5.A.2.b. Request for Trial Before Military Judge Alone

If the accused was tried before the military judge alone, include an executed copy of the written request, if one was submitted, in the ROT as an appellate exhibit.

5.A.2.c. Detailing Letters

The detailing letters for the military judge and counsel, if submitted, shall be included in the ROT as appellate exhibits.

5.A.2.d. Court-Martial Data Sheet (DD Form-494)

Unless otherwise directed by the OEGCMJ, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

5.A.2.e. Exhibits

(1) If an exhibit consists of video or audio tape(s), affix clear and complete labels to the original of the tape and to the tape's box or protective sleeve. The label shall indicate the case name, the exhibit number, and any relevant witness or event names (*i.e.*, "U.S. v. Smith, Prosecution Exhibit ____, Interview of SN Jones 2/13/98" or "U.S. v. Jones, Defense Exhibit ____, Videotape of Scene Following 2/13/98 Automobile Accident").

(2) The first page of a document shall be marked to indicate the point in the ROT where the exhibit was marked, offered (or not), and admitted (or not). Draw a line through the parts of the marking(s) that do not apply. For example:

Prosecution Exhibit ____ for identification,
page 1 of ____ page(s). Marked at R ____,
offered at R ____, admitted at R ____.

(3) Second and subsequent pages of exhibits shall be marked with the exhibit number and, in the case of multiple page exhibits, the page number. Draw a line through the parts of the marking that do not apply. For example:

Prosecution Exhibit ____,
page ____ of ____ pages.

(4) All documentary or photographic exhibits shall be mounted on standard size 8 1/2" x 11" paper. Originals of larger exhibits shall be folded, to the extent

possible, to 8 1/2" x 11" in size. Copies of larger exhibits shall, if feasible, be reduced to 8 1/2" x 11" size.

(5) Even though exhibits are "sealed", two copies should be prepared and sealed in the same manner as the original and accompany the original ROT. The pages of a "sealed" exhibit shall be marked in the same way as other exhibits.

5.A.2.f. General Instructions

(1) Do not use plastic document protectors.

(2) Complete and sign the chronology sheet, Form DD 490 or DD 491.

(3) Use only "slide" fasteners (with compressors) and bind ROTs at the top. Two-inch capacity fasteners are preferred [stock number 7510-00-235-6068]. Do not use "book style" or "left-hand" binding, 3-ring binders, "screw and post" type fasteners, or report covers.

(4) All copies shall be copied one sided; *do not copy* "2-sided" or "back to back."

(5) Copies shall be as legible as originals.

(6) Copies of the ROT shall appear, to the extent possible, substantially as the original appears. For example: if the original has 5 one-inch thick volumes, the copies should each have 5 one-inch thick volumes. Copies of video or audiotapes, charts, photographs, etc., shall appear substantially as they appear in the original.

(7) Do not exceed size limitations for individual volumes in multi-volume ROTs.

(8) Do not forward the original ROT without the required number of copies.

(9) Fill empty space in shipping boxes with packing material to avoid damage to the ROT and copies.

(10) Provide a complete copy of the ROT by traceable means to all defense counsel (including IMC and civilian defense counsel (if any)).

(11) Ensure return receipts for service of documents to the accused and counsel (*i.e.*, ROT, SJARs, etc.) are included in the ROT.

(12) Include one extra copy of the court-martial promulgating order and the action of the convening authority separate from those contained in the ROT and required complete copies.

(13) Forward a copy of the promulgating order directly to the servicing CGIS office in accordance with Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series).

(14) Shipment of the ROT, required copies, and other materials should be through the current General Services Administration (GSA) contractor for domestic express delivery service instead of certified mail. Include the name, room number, and telephone number of the addressee on the express delivery label. The use of registered mail is not authorized. This rule does not apply to ROTs shipped from overseas. Such ROTs should be sent by the most reliable and expeditious means.

5.A.2.g. Arrangement of the ROT

(1) When forwarded to Commandant (G-LMJ), a verbatim ROT (and all of its copies) shall be arranged in the following sequence as is appropriate:

- (a) Front cover and chronology sheet.
- (b) Records of proceedings in connection with vacation of suspension.
- (c) Conditions of suspensions and proof of service on probationer under RCM 1108.
- (d) Waivers or withdrawal of appellate review under RCM 1110.
- (e) Promulgating order.
- (f) Action of OEGCMJ.
- (g) Dated and signed action of convening authority or substitute convening authority or, statement why it is impracticable for the convening authority to act. Attach a copy of any letter of reprimand.
- (h) Matters submitted by accused under RCM 1105, or written waivers, and any brief submitted under Article 38(c), UCMJ.
- (i) Recommendations and other matters relative to clemency not contained in subparagraph (h).
- (j) Certificate of service of SJA or law specialist recommendation on defense counsel [*see*, RCM 1106(f)(1)].
- (k) Signed SJA or law specialist recommendation [*see*, RCM 1106].
- (l) Verification of receipt by defense counsel of the RCM 1106 recommendation and any response by defense counsel to SJA or law specialist recommendations.
- (m) Any deferment request and action taken on such request.

- (n) Explanation for any substitute authentication under RCM 1104(a)(2)(B).
- (o) Other appropriate matters, including items set forth in RCM 1103(b)(3)(F).
- (p) Article 32, UCMJ investigation, if any. If waived, include documentation of waiver.
- (q) Article 34, UCMJ SJA advice [*see*, RCM 406]; if waived, include documentation of waiver.
- (r) Records of former trial (in the case of a rehearing).
- (s) Counsel requests and action taken (*e.g.*, requests concerning delay, depositions, etc.).
- (t) The transcript portion of the ROT compiled in the following order:
 - i. Index sheet;
 - ii. Receipt of accused, or certificate of trial counsel indicating delivery of a copy of the ROT to accused;
 - iii. Record of court proceedings;
 - iv. Exhibits admitted in evidence - When an exhibit is in the form of an audio or videotape, chart, photograph, or other non-written testimony a copy of the exhibit must be made and attached to each ROT copy;
 - v. Appellate exhibits;
 - vi. Offered exhibits not received in evidence.

(2) Summarized ROTs will be arranged in the same sequence as verbatim ROTs, so far as may be appropriate.

(3) If an item required above is available in full in another part of the ROT a “filler page” identifying the location of the item in the record may be used in place of a second copy. A “filler page” may also be used in copies of the ROT to refer to documents found only in the original ROT (*e.g.*, sealed exhibits).

5.A.2.h. Number and Distribution of ROT copies

a. The original ROT is filed with Commandant (G-LMJ). Seven additional and complete copies are required for courts-martial cases in which Coast Guard Court of Criminal Appeals review is required under RCM 1201(a); these additional copies are also filed with Commandant (G-LMJ).

- b. One copy for each accused.
- c. One copy for the convening authority.

- d. One copy for the OEGCMJ.
- e. Additional copies as required by trial counsel or the convening authority.
- f. In all cases where approved confinement is for a period of 12 months or more, provide a complete copy of the ROT by traceable means directly to the Naval Clemency and Parole Board. [*See*, Department of the Navy Clemency and Parole Systems, SECNAVINST 5815.3H, paragraph 304.] The address of the Naval Clemency and Parole Board is:

Naval Clemency and Parole Board
Washington Naval Yard
901 M St. SE, Building 36, Room 322
Washington, D.C. 20374-5023
Phone: (202) 685-6455

5.A.3. Distribution of SJA Recommendation [SJAR]

The original SJA recommendation shall be attached to the original ROT. A copy shall be served on counsel for the accused as set forth in RCM 1106(f). Receipt of the recommendation by the defense counsel shall be verified by use of a receipt. A copy of the recommendation and the verification of receipt by the defense counsel must be attached to each copy of the ROT.

5.A.4. Disposition of ROTs after Convening Authority Action

5.A.4.a. GCM or SPCM with Approved Death Sentence, Punitive Discharge, or Confinement for One Year or Longer

A convening authority, upon acting on a general or special court-martial ROT with a sentence including an approved death sentence, punitive discharge (regardless of whether the discharge was suspended), or confinement for one year or longer, shall forward the ROT as follows:

- (1) If the sentence includes death or otherwise if there is no waiver or withdrawal of appellate review under RCM 1110, the ROT shall be sent directly to Commandant (G-LMJ) for review by the Coast Guard Court of Criminal Appeals. [*See*, paragraph 5.A.2.h above for required number of copies; *see* paragraph 5.G.6 below for required number of copies of the promulgating order.] The convening authority shall notify the SJA when he or she takes action and provide a copy of the action and promulgating order to the OEGCMJ.

(2) If the sentence does not include death and there is a waiver under RCM 1110, the ROT shall be referred to a law specialist for review under RCM 1112 [*see*, paragraph 5.F.3 below].

(3) The convening authority shall provide the accused's last known address and phone number in the letter of transmittal forwarding the ROT to Commandant (G-LMJ) for referral to the Coast Guard Court of Criminal Appeals [*see*, RCM 1201].

5.A.4.b. GCM Including a Conviction and a Sentence

(1) In a case in which there has been a finding of guilty and a sentence, and there is not a waiver under RCM 1110, but the case is not subject to review under subparagraph 5.F.2.a below, the ROT shall be sent directly to Commandant (G-LMJ) for review by the Judge Advocate General of the Coast Guard (DoT General Counsel) under RCM 1201(b)(1).

(2) In cases in which there is a waiver under RCM 1110, the ROT shall be referred to a law specialist for review under RCM 1112 [*see*, paragraph 5.F.3 below].

5.A.4.c. SPCM Not Including Approved BCD and SCM

In special court-martial cases not including an approved bad conduct discharge and all summary courts-martial the ROT shall be referred to a law specialist for review under RCM 1112 [*see*, paragraph 5.F.3 below]. following action by the convening authority.

5.A.4.d. GCM and SPCM Resulting in Acquittal

In all such cases the ROT shall be forwarded directly to Commandant (G-LMJ) for filing upon issuance of the promulgating order by the convening authority.

5.B. ADMINISTRATIVE POST-TRIAL MATTERS

5.B.1. Military Judge Record and Report

Upon final adjournment in each case, or if no trial is held upon withdrawal of the charges from court-martial or discharge of the accused, the military judge shall forward a "Military Judge Record and Report" to Commandant (G-L-4) with a copy to Commandant (G-LMJ). This report should include substantially the same information as shown on the sample report contained in enclosure (18b). The specification(s) information may be provided by submitting a copy of the charges and specifications annotated to show pleas and findings or other convenient means to show the disposition of each specification(s). Upon authentication of the ROT the military judge shall inform Commandant (G-L-4) of the amount of post-trial time expended on the case.

5.B.2. Mailing ROT to the Military Judge

Shipment of the ROT to the military judge for authentication should be through the current General Services Administration [GSA] contractor for domestic express delivery service. This method allows the package to be tracked and eliminates delay. Include the name, room number, and telephone number of the addressee on the express delivery label. The use of registered mail is not authorized.

5.C. POST-TRIAL DUTIES OF DEFENSE COUNSEL

5.C.1. Mandatory Duties

Trial defense counsel's representational duties are of a continuing nature. They do not terminate at the conclusion of the court-martial. The following duties are mandatory.

a. Trial defense counsel must advise the accused of his or her post-trial and appellate rights, the right to request counsel at such review, and the right to waive or withdraw from appellate review [*see*, RCM 1110]. One of the forms set forth in enclosure (17a-c), or a substantially similar form, must be executed by counsel and the accused in every special and general court-martial in which findings of guilty are announced. In a case where the accused desires to waive appellate review, one of the forms set forth in either Appendix 19 or 20, MCM, must be executed. Any waiver must be filed within 10 days after receipt by the accused or his or her counsel of a copy of the written action by the convening authority. [*See*, RCM 1110(f)(1).]

b. Trial defense counsel must advise the accused in cases where a sentence of confinement has been awarded, of the accused's right to make application for deferment of that confinement in accordance with Article 57(d), UCMJ and assist the accused in making application to the appropriate authority. If automatic administrative forfeitures under Article 58b, UCMJ are applicable trial defense counsel must advise the accused and further advise the accused of his or her right to request a deferral.

c. Trial defense counsel should examine the ROT and indicate the examination on the authentication page or other form provided by the trial counsel normally within 7 calendar days. [*See*, RCM 1103(1)(B).] If errors or omissions are discovered, trial defense counsel should recommend appropriate changes to ensure the ROT accurately reflects the proceedings.

d. Trial defense counsel must review and, if warranted, comment on the post-trial recommendations. [*See*, RCM 1106(f).]

e. Trial defense counsel must assist the accused to submit any matters desired under RCM 1105 or to waive his or her rights to do so.

5.C.2. Other Duties

The following are a non-exclusive list of duties trial defense counsel may perform when appropriate if the case or facts warrant it.

a. Trial defense counsel may prepare for attachment to the ROT an Article 38(c)(1), UCMJ brief setting forth such matters as he or she believes should be considered on behalf of the accused on review. Such brief should be submitted prior to the expiration of the time limit set forth in RCM 1106(f)(5) to ensure the convening authority will have the brief for consideration when he or she takes action. In order that the SJA or law specialist, convening authority, and reviewing authorities can maintain their impartiality in the process of review and that reviewing officials will have the positions of both sides in the case, in those cases where a brief is forwarded pursuant to Article 38(c)(1), UCMJ, defense counsel shall serve, or cause to be served, a copy of such brief on trial counsel who may within 5 days submit an answering brief for attachment to the ROT. The answering brief submitted by trial counsel is limited to responding to those propositions and issues raised in the brief of defense counsel.

b. If appropriate, trial defense counsel should advise the accused of the right to submit an “Application for Relief under Article 69, UCMJ,” and if requested by accused trial defense counsel should comply with section 5.J below., . [See, paragraph 5.J.3 below.]

c. If appropriate, trial defense counsel should submit a petition for a re-hearing or a new trial pursuant to Article 73, UCMJ. [See, RCM 1210 and section 5.K below.]

d. If appropriate, trial defense counsel should advise the accused concerning voluntary and required appellate leave. [See, Article 7-A-21, Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

5.C.3. Seeking Extraordinary Relief

Trial defense counsel has a duty to assist the accused in matters ancillary to the trial. In appropriate cases that duty may involve assistance in preparing a petition for extraordinary relief in accordance with the rules of the Coast Guard Court of Criminal Appeals and the Court of Appeals for the Armed Forces. Careful attention should be given to the rules of court concerning style, copies, and service. To acknowledge the respective responsibilities of trial and appellate defense counsel, petitions for extraordinary relief on behalf of an accused shall be prepared for signature by the accused and be forwarded directly to the appropriate court. Information copies of the petition shall be forwarded to trial counsel, military judge, Commandant (G-L-5), and Commandant (G-LMJ).

5.C.4. Termination of Duties of Defense Counsel

5.C.4.a. General

Defense counsel shall continue to act until the proceedings are final under RCM 1209; that is, until any direct appeal possible is acted upon and the accused notified. Absent an approved withdrawal or release from active duty an attorney-client relationship established at a general or special court-martial continues to exist after the trial regardless of the ultimate character of the proceedings or whether appellate defense counsel is appointed. A defense counsel does not have the right to appear at any lower forum where an accused does not have a right to counsel but shall continue to provide the accused with general representation and advice. This does not, however, preclude the convening authority or commanding officer from permitting defense counsel to appear at either a summary court-martial or mast at the sole discretion of that officer.

5.C.4.b. Termination of Duties in Formal Appellate Process

Enclosure (19) is a suggested format for a trial defense counsel request for judicial approval of termination of representation duties.

5.C.5. Appointment of Appellate Defense Counsel

In accordance with Article 70(c), UCMJ, appellate defense counsel will be detailed by the Chief Counsel to represent an accused before the Coast Guard Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the U.S. Supreme Court. [*See also*, paragraph 5.C.6 below regarding *habeas corpus* representation.]

5.C.6. Appointment of Counsel for Members Sentenced to Death by GCM

Coast Guard members sentenced to death by a court-martial, who seek to file in federal civilian court(s) post-conviction *habeas corpus* petition(s) respecting such court-martial following the approval of their court-martial sentence to death by the President pursuant to Article 71, UCMJ, shall, upon request of the accused to the Chief Counsel, be detailed military counsel by the Chief Counsel to represent them in such proceedings and any appeals therefrom. [*See*, Article 70(e), UCMJ.] Designated appellate defense counsel may be a military attorney from the Coast Guard or any other DoD military service pursuant to an inter-service agreement.

5.D. EFFECTIVE DATE OF COURTS-MARTIAL SENTENCES

5.D.1. General

Except for an adjudged sentence of confinement [*see*, RCM 1101], adjudged reduction in pay grade [*see*, Article 57(a)(1), UCMJ], and/or adjudged [*see*, Article 57(a)(1), UCMJ] or administrative [*see*, Article 58b, UCMJ] forfeiture of pay and allowances, no part of a

court-martial sentence may be carried out until it has been ordered executed. Those approved portions of the sentence that do not extend to death, dismissal, or dishonorable or bad conduct discharge will normally be ordered executed in the initial Convening Authority Action, unless suspended or deferred in that action.

5.D.2. Death or Dismissal

Sentences to death or dismissal may be ordered executed only by the President or the Secretary of the Department of Transportation respectively. Commandant (G-LMJ) shall be consulted in every trial in which death or dismissal is contemplated prior to trial and again upon the sentence of death or dismissal.

5.D.3. Confinement

5.D.3.a. Effective Date of Confinement

Unless deferred, any period of confinement included in a court-martial sentence begins on the date the sentence is adjudged, regardless of whether the accused is already confined. [See, RCM 1113(d)(2), 1107(f)(4)(C), and Article 8-F-5, Coast Guard Personnel Manual, COMDTINST M1000.6 (series), governing confinement and designation of the place of confinement.]

5.D.3.b. Deferment of Sentence to Confinement

If requested by the accused a sentence to confinement may be deferred by the convening authority or by the OEGCMJ over the accused if the accused is no longer in the convening authority's jurisdiction. This request must originate with the accused and must be in writing. For termination of deferment, *see* RCM 1101(c)(6). Any request for deferment of confinement and the written action thereon shall be included in the ROT. [See, RCM 1101(c).]

5.D.4. Punitive Discharge

a. No dishonorable or bad conduct discharge may be ordered executed until the conviction is final under RCM 1209. The OEGCMJ may order the sentence executed in all cases where the accused has waived appellate review and review under RCM 1112(f) is final.

b. In all other cases, even after the conviction is final, the punitive discharge may not be ordered executed until the ROT has been reviewed for clemency in accordance with Article 8-F-6(d)(4), Coast Guard Personnel Manual, COMDTINST M1000.6 (series), and the discharge approved by Commandant. When clemency review is completed Commandant (G-LMJ) will advise whether clemency was granted or denied pursuant to Article 74(a), UCMJ and the type of discharge to be issued.

c. If the punitive discharge is approved, Commandant (G-LMJ) will notify the OEGCMJ for the command that convened the court-martial for final action on the ROT pursuant to RCM 1113(c)(1)(B). If the advice of that officer's SJA is required under RCM 1113(c)(1)(B), the SJA shall ensure the ROT contains a statement that such advice was considered by the OEGCMJ together with a brief synopsis or copies of relevant documents reflecting the nature and character of duty of the accused since approval of the sentence. Except as noted above, the advice of the SJA required under RCM 1113(c)(1)(B) need not be in writing. The final action shall order the punitive discharge executed and shall be attached to the ROT. Once the final action is signed, the original final action shall be forwarded to Commandant (G-LMJ).

5.D.5. Forfeitures, Reductions in Pay Grade, and Automatic Provisions

5.D.5.a. Effective Date of Forfeitures and Reductions in Pay Grade

Article 57(a), UCMJ, makes adjudged forfeitures of pay and allowances and reductions in pay grade effective 14 days after being adjudged or on the date the sentence is approved by the convening authority, whichever is earlier. Upon application of the accused the convening authority may defer the effective date of forfeiture or reduction in pay grade at any time until the date the convening authority acts on the sentence. Deferment may be rescinded based on information not previously considered. The Coast Guard by policy does not effect the administrative reduction in pay grade authorized under Article 58a, UCMJ [*see*, paragraph 4.E.1 above].

5.D.5.b. Statutory Administrative Forfeitures

(1) Article 58b, UCMJ, provides for administrative forfeiture of pay and allowances during confinement for a member sentenced by a court-martial to a period of confinement exceeding 6 months or any period of confinement accompanied by a punitive discharge. Forfeitures under Article 58b, UCMJ are not an adjudged court-martial sentence.

(2) If Article 58b, UCMJ administrative forfeitures apply in the case of a general court-martial, all pay and allowances are automatically forfeited during the period of confinement. In the case of a special court-martial, two-thirds of pay are automatically forfeited during the period of confinement. The amount forfeited by operation of Article 58b, UCMJ is that amount above any adjudged and approved fines or forfeitures. The total adjudged fines and forfeitures and administrative forfeitures may not exceed the jurisdictional limit of the court-martial. Article 58b, UCMJ administrative forfeitures automatically take effect, but may be deferred. [*See*, subparagraph 5.D.5.a above] or waived [*See*, subparagraph 5.D.5.a.(3) above].

(3) In cases where a member subject to Article 58b, UCMJ administrative forfeitures has dependents, all or part of the forfeiture may be waived by the convening authority anytime after sentencing for a period not to exceed 6 months, provided that the amounts waived are paid directly to the accused's dependents.

(4) Administrative forfeiture under Article 58b, UCMJ is a congressionally required administrative (not a courts-martial sentencing or punitive) action applicable only if a prisoner is otherwise entitled to pay. There are circumstances in which a member is convicted and sentenced to confinement and is not entitled to, or loses entitlement to military pay. Notable is the loss of entitlement to pay when a prisoner's enlistment expires while in confinement (e.g., a prior extension does not become effective if the member is confined and a prisoner is precluded from reenlisting). [See, subparagraph 3.J.2.e above.]

5.D.5.c. Procedures

(1) An order deferring any forfeitures or reduction in pay grade should be signed by the convening authority and worded substantially as follows:

The [forfeitures/ reduction in pay grade] [adjudged/ arising by operation of Article 58b, UCMJ from the sentence adjudged] on [date sentence adjudged] in the case of [accused's name, SSN, and unit] by the [Special/General] Court-Martial convened by my order number [convening order number] dated [date] are hereby deferred from [effective date of deferral] until [end date of deferral / date action is taken on the sentence].

(2) An order waiving administrative forfeitures should be signed by the convening authority or person acting under Article 60, UCMJ and RCM 1107 and worded substantially as follows:

Any forfeitures arising by operation of Article 58b, UCMJ, as a result of the sentence adjudged [date sentence imposed] in the case of [accused's name, SSN, and unit] by my [Special/General] Court-Martial Order [CM Order Number] dated [date] are hereby waived as follows: Effective date of waiver, [date]; End date of waiver, [date -- not to exceed 6 months from start date]; Amount of forfeitures waived per month [stated in whole dollar amounts]. This waiver applies only to forfeitures arising by operation of Article 58b, UCMJ, and does not apply to adjudged forfeitures. All amounts waived are to be paid to the accused's dependents. [If applicable -- This waiver is granted at the request of [the accused, defense counsel, the accused's spouse, etc.]. (Attach copy of any request.)]

(3) Deferral and waiver orders may be combined in a single document. This document may be the convening authority's action; however, deferral decisions may be made prior to the action. A certified copy of any order waiving administrative forfeitures, or deferring forfeitures or reductions in pay grade, shall be provided immediately to the PERSRU responsible for the accused's service record. Orders denying

deferral requests should include the reasons for denial [*see*, RCM 1101(c)(3), Discussion]. All original orders shall be attached to the ROT.

5.D.6. Effective Date of Other Punishment

All other punishments adjudged by a court-martial take effect on the date ordered executed.

5.D.7. Payment of Fines

Payment of fines shall be made by check or money order payable to the U.S. Treasury and sent to the Human Resources Service and Information Center [HRSIC], Topeka, Kansas.

Commanding Officer (SES)
USCG HRSIC
Federal Building
444 S. E. Quincy St.
Topeka, KS 66683-3591

5.E. SUSPENSION OF COURTS-MARTIAL SENTENCE(S)

5.E.1. Suspension of Execution of Sentences

a. Suspension of a court-martial sentence is governed by RCM 1108. Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline and when the accused's prospects for rehabilitation would more likely be enhanced by probation than the execution of all or a part of the sentence adjudged.

b. The OEGCMJ may in addition to authority otherwise granted, suspend or remit any part or amount of the unexecuted part of a sentence, other than a sentence approved by the President. No suspension may be for an unreasonably long period. Absent unusual circumstances, the period of suspension shall normally not exceed the greater of 18 months, or 1 year beyond any period of confinement adjudged.

5.E.2. Vacation of suspension

Article 72, UCMJ and RCM 1109 governs procedures and requirements for vacating the suspension of a sentence.

a. If the probationer is placed in confinement pending a vacation hearing, those officers designated under paragraph 3.C.4.b above, shall be available to review confinement under the provisions of RCM 1109(c)(4).

b. The vacation proceedings mandated by RCM 1109(d) shall be reported on the form set forth in Appendix 18, MCM, or a substantially equivalent document. For other vacation proceedings in which a record is required under RCM 1109(e)(4) or (5), Appendix 18, MCM, may be used as a guide and modified to provide a record of the proceedings. For SCM proceedings, the form set forth in enclosure (7b) may be used. In the case of Coast Guard members confined at Department of Defense confinement facilities, the commanding officer of the facility may conduct the hearings required by RCM 1109(d) and (e) if he or she is a special court-martial convening authority.

c. A supplemental promulgating order shall be issued in any case in which all or a portion of a suspended sentence is vacated. The original of this order, and the record of proceedings shall be forwarded to Commandant (G-LMJ) for attachment to the original ROT.

5.E.3. Counsel

Rights to military counsel for proceedings governed by RCM 1109 are set forth in RCM 1109(c)(4)(A)(iii) and (d)(1)(B)(iv). Military counsel detailed to represent the accused at these proceedings must meet the requirements of Article 27(b), UCMJ. Such military counsel need not be the same counsel who originally represented the probationer.

5.F. COURTS-MARTIAL ACTION AND REVIEW

5.F.1. Action

Action on the sentence and, in the discretion of the convening authority, on the findings shall be taken by the authority that convened the court in accordance with RCM 1107. Forms for action are contained in Appendix 16, MCM. A sample action is found at enclosure (18e). The convening authority shall adhere to applicable time limits set forth in RCM 1107(b)(2), 1105, and 1106(f). No action by the convening authority is required in those cases resulting in an acquittal. [See, section 5.G below for issuance of promulgating orders.]

5.F.1.a. Impracticable for Convening Authority to Act or OEGCMJ is Disqualified

(1) Special Court-Martial

When it is impracticable for the convening authority to act, the ROT shall be forwarded to the OEGCMJ with a statement of the reason why the convening authority did not act. The OEGCMJ may take action or, in that officer's discretion, refer the case to any other special court-martial convening authority within his or her jurisdiction for action.

(2) OEGCMJ

When it is impracticable for the OEGCMJ as convening authority, to act in accordance with RCM 1107, or when the OEGCMJ is disqualified to act under RCM 1112(f) or otherwise, Commandant (G-LMJ) shall be advised and requested to designate another OEGCMJ to take action. The ROT shall then be forwarded to the designated officer with a statement of the reason why the OEGCMJ did not act. Commandant (G-LMJ)'s designation of an alternate convening authority/OEGCMJ will be made part of the ROT.

5.F.1.b. SJA Recommendation [SJAR]

(1) Designation of SJA (Law Specialist)

Prior to taking action on the ROT of a general court-martial or a special court-martial in which a bad conduct discharge was adjudged, the convening authority, or the substitute convening authority designated under subparagraph 5.F.1.a above, shall obtain the recommendation of his or her SJA [*see*, RCM 1106]. A sample RCM 1106 recommendation is found at enclosure (18d). When a convening authority has no SJA, he or she shall forward the ROT for action to the OEGCMJ, or request the OEGCMJ designate a law specialist to prepare the recommendation. Such officer may be the SJA of the OEGCMJ or any law specialist on his or her staff who is not otherwise disqualified by prior participation as counsel or investigating officer in the case or one related to it. The OEGCMJ may request Commandant (G-LMJ) designate a law specialist if no qualified officer is available on his or her staff.

(2) Distribution of SJA Recommendation [SJAR]

The original recommendation shall be attached to the original ROT. A copy shall be served on counsel for the accused as set forth in RCM 1106(f). Receipt of the recommendation by the defense counsel shall be verified by use of a receipt. A copy of the recommendation and the verification of receipt by the defense counsel must be attached to each copy of the ROT.

5.F.1.c. Designation of Place of Confinement

The convening authority of a court-martial that includes a sentence to confinement is required to originally designate the place of temporary custody or confinement. [*See*, section 6.H below. and paragraph 5.D.3 above.]

5.F.1.d. Sentences Including Reprimand

(1) General

Reprimands issued in execution of court-martial sentences are punitive reprimands (and to be distinguished from administrative non-punitive reprimands) and are required to be in writing.

(2) By whom issued

Punitive letters of reprimand adjudged by a court-martial shall normally be issued by the convening authority as part of the action on the ROT in accordance with the provisions of RCM 1107(f)(4)(G), RCM 1003(b)(1).

(3) Contents

The punitive letter of reprimand shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

A copy of this letter will be placed in your official record at Coast Guard Headquarters. You may forward to Coast Guard Personnel Command (CGPC (adm-3)) within 15 days after receipt of this action such statement concerning this letter as you may desire for inclusion in your record. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of other personnel impugned. Your statement shall not contain countercharges.

(4) Procedure of issuance

The original letter shall be delivered to the accused either personally or through the mail by return receipt requested. If personally delivered, the accused shall acknowledge receipt of the punitive letter of reprimand on CGPC's copy of the letter to be filled in the member's official record. A copy of the letter shall be appended to the convening authority's action (or, if not issued by the convening authority, to the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter in the following tenor:

Pursuant to the sentence of the court, as herein approved, a letter of reprimand is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.

(5) Forwarding Copy to Coast Guard Personnel Command [CGPC]

A copy of the letter of reprimand, with either the accused's acknowledgment of receipt or the return receipt requested card attached, shall be forwarded to Coast Guard Personnel Command [CGPC (adm-3)].

(6) Appeals

Review, including appellate review, of letters of reprimand issued as part of an approved court-martial sentence will be accomplished as provided for by the UCMJ, the MCM, and

this Manual with respect to the proceedings of the particular court-martial that imposed the sentence. No separate appeal from these letters will be considered.

5.F.1.e. Companion Cases Referred

In court martial cases where the trial of a companion case is ordered to be tried separately, jointly, or in common with the current case the convening authority shall so indicate in the action on the record in each case.

5.F.2. Disposition of ROTs after Convening Authority Action

5.F.2.a. GCM or SPCM with Approved Death Sentence, Punitive Discharge, or Confinement for One Year or Longer

A convening authority, upon acting on a general or special court-martial ROT with a sentence including an approved death sentence, punitive discharge (regardless of whether the discharge was suspended), or confinement for one year or longer, shall forward the ROT as follows:

(1) If the sentence includes death or otherwise if there is no waiver or withdrawal of appellate review under RCM 1110, the ROT shall be sent directly to Commandant (G-LMJ) for review by the Coast Guard Court of Criminal Appeals. [See, subparagraph 5.A.2.h above for required number of copies; see section 5.G below for required number of copies of the promulgating order.] The convening authority shall notify the SJA when he or she takes action and provide a copy of the action and promulgating order to the OEGCMJ.

(2) If the sentence does not include death and there is a waiver under RCM 1110, the ROT shall be referred to a law specialist for review under RCM 1112 [see, paragraph 5.F.3 below].

(3) The convening authority shall provide the accused's last known address and phone number in the letter of transmittal forwarding the ROT to Commandant (G-LMJ) for referral to the Coast Guard Court of Criminal Appeals [see, RCM 1201].

5.F.2.b. GCM Including a Conviction and a Sentence

(1) In a case in which there has been a finding of guilty and a sentence, and there is not a waiver under RCM 1110, but the case is not subject to review under subparagraph 5.F.2.a above, the ROT shall be sent directly to Commandant (G-LMJ) for review by the Judge Advocate General of the Coast Guard (DoT General Counsel) under RCM 1201(b)(1).

(2) In cases in which there is a waiver under RCM 1110, the ROT shall be referred to a law specialist for review under RCM 1112 as set forth in paragraph 5.F.3 below.

5.F.2.c. SPCM Not Including Approved BCD and SCM

In special court-martial cases not including an approved bad conduct discharge and all summary courts-martial the ROT shall be referred to a law specialist for review under RCM 1112 as set forth in paragraph 5.F.3 below, following action by the convening authority.

5.F.2.d. GCM and SPCM Resulting in Acquittal

In all such cases the ROT shall be forwarded directly to Commandant (G-LMJ) for filing upon issuance of the promulgating order by the convening authority.

5.F.3. SJA Review and Forwarding

5.F.3.a. Review by a Law Specialist [SJA]

(1) ROTs requiring review under RCM 1112, shall be forwarded to the SJA of the OEGCMJ. The SJA may review the ROT or cause a law specialist \ on his or her staff to review it. A sample RCM 1112 review is found at enclosure (18g).

(2) If the SJA is disqualified or otherwise unavailable and no law specialist on his or her staff is qualified or available, the SJA shall request Commandant (G-LMJ) designate an alternate SJA to review the ROT or cause the ROT to be reviewed by another law specialist on his or her staff. The ROT will be forwarded to the alternate SJA who shall review the ROT or cause it to be reviewed. If action is required under RCM 1112(e), the ROT and review shall be forwarded to the original OEGCMJ, or a substitute OEGCMJ if one was designated.

5.F.3.b. Forwarding

(1) In cases wherein the completion of the review required by RCM 1112, renders the conviction final under RCM 1209, the original and two copies of the review shall be attached to the original ROT and forwarded to Commandant (G-LMJ) for filing.

(2) In cases where action is required by RCM 1112(e) the ROT shall be forwarded to the OEGCMJ for action under RCM 1112(f). The original and two copies of the review shall accompany the ROT. A sample RCM 1112(f) action is found at enclosure (18h). A copy of the action shall be attached to each copy of the ROT. [See, subparagraph 5.A.2.h above for number of copies of the ROT required; see section 5.G below for procedures governing promulgating orders, if required.]

5.F.3.c. Distribution

Any RCM 1112 review or any action by the OEGCMJ under RCM 1112, shall be distributed as follows:

- (1) Original and two signed copies attached to original ROT.

- (2) One certified copy attached to each copy of the ROT.
- (3) One certified copy forwarded to PERSRU maintaining service record of accused.
- (4) One copy forwarded to accused.
- (5) One copy forwarded to each trial counsel, defense counsel, and military judge detailed to the court that tried the accused.

5.F.3.d. Cases Subject to Review Under RCM 1112

The accounting, and a recommendation as to any appropriate action to be taken as a result of the delay in accordance with RCM 1112 (d)(3) shall be included in the law specialist's review. The accounting and ROT shall be sent for action to the OEGCMJ in accordance with RCM 1112(e) if corrective action due to delay is recommended.

5.F.4. Accounting for Delays in Review

5.F.4.a. Delays that Require Accounting

In all cases in which there was any finding of guilty and any of the following criteria apply, the post-trial delay must be accounted for as described in this paragraph:

- (1) More than 120 days elapsed between the date the sentence was adjudged and the date the convening authority's action under RCM 1107 was taken;
- (2) In a case subject to review under RCM 1112, more than 120 days elapsed between the date the sentence was adjudged and the date the law specialist completed the review required by RCM 1112; or,
- (3) The accused was in post-trial confinement for more than 90 days before the convening authority's action under RCM 1107 was taken.

5.F.4.b. Format

An accounting required by subparagraph 5.F.4.a above shall include a chronology showing post-trial processing of the case; a description of unusual delays attributable to the defense or military judge, including any significant documents not otherwise included in the ROT; a concise explanation of any other circumstances significantly contributing to the delay; and corrective action, if any, taken.

5.F.4.c. Cases Forwarded for Review by the Coast Guard Court of Criminal Appeals

The accounting shall be included in the letter of transmittal forwarding the case to Commandant (G-LMJ) for further review [see, RCM 1111(a)(1)] and signed by the convening authority or SJA.

5.F.4.d. Cases Subject to Review Under RCM 1112

The accounting, and a recommendation as to any appropriate action to be taken as a result of the delay in accordance with RCM 1112 (d)(3) shall be included in the law specialist's review. The accounting and ROT shall be sent for action to the OEGCMJ in accordance with RCM 1112(e) if corrective action due to delay is recommended.

5.F.5. Distribution

A copy of the action of the convening authority, of the review by a law specialist and of the action of the OEGCMJ shall be distributed to each military judge, trial counsel, and defense counsel of the court martial before which the case was tried.

5.G. PROMULGATING ORDERS FOR GCM AND SPCM

5.G.1. Initial Order

The convening authority will issue a promulgating order in every court-martial (including acquittals). A separate court-martial order will be issued for each accused tried. [See, RCM 1114 and Appendix 17, MCM.]

5.G.2. Supplementary Order

Any action taken after issuance of the initial court-martial order that changes the findings, sentence, or place of confinement requires a supplementary court-martial order. The convening authority or a superior or substitute convening authority will prepare the supplementary court-martial order with distribution the same as that of the initial order. A change in the place of confinement as a result of an administrative decision made within the corrections system does not require a supplemental court-martial order.

5.G.3. Supplementary Orders in Cases Reviewed by the Coast Guard Court of Criminal Appeals [CGCCA]

If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the conviction has become final without modification of the findings or sentence, no supplementary court-martial order is necessary. A supplementary promulgating order shall be issued in all other cases. Such orders shall be published as follows:

- a. The Chief Counsel issues supplementary orders in cases involving death sentences and dismissals by direction of the President, or the Secretary, Department of Transportation as appropriate.
- b. The cognizant OEGCMJ or convening authority shall issue other supplementary orders. In cases in which appellate review was required, supplementary

orders will be issued upon notification by Commandant (G-LMJ) that the appellate review process is complete and that action is necessary to finalize the case.

5.G.4. Promulgating Order Form

Various forms for promulgating orders are contained in Appendix 17, MCM, and an example is provided in enclosure (18f). The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him or her. In either case the name, grade, and title of the subscribing officer, including his or her unit, shall be given. Where a subordinate officer signs by direction, his or her name, title, and organization shall be followed by the words: "By direction of [name, grade, and title of issuing officer]." Certified copies of promulgating orders are copies bearing the statement: "Certified to be a true copy," over the signature, grade, and title of an officer.

5.G.5. Promulgating Order Numbering

Each promulgating order and supplementary order is unique and numbered in a separate sequence, starting with 1-FY (where "FY" is the fiscal year in which the order is signed) to identify the first promulgating order or supplementary order of the fiscal year and continuing with 2-FY, 3-FY, etc., as a subsequent promulgating order or supplementary order is issued during the same fiscal year.

5.G.6. Distribution

All initial and supplementary promulgating orders shall be distributed as follows:

- a. Original attached to the original ROT.
- b. One certified copy forwarded to the PERSRU maintaining the service record of the accused for appropriate service record entries (or, in the case of a retired member, HRSIC).
- c. One certified copy attached to each copy of the ROT.
- d. Two certified copies forwarded to the place of confinement (if the accused is still in confinement).
- e. One copy forwarded to each accused.
- f. One copy forwarded to each trial and defense counsel(s).
- g. If the accused is confined in a Navy or Marine Corps Correctional Center, one copy forwarded to the Secretary, Naval Clemency and Parole Board [*see*, subparagraph 5.A.2.h above].
- h. One copy forwarded to CGPC (adm-3).
- i. One copy forwarded to the servicing CGIS office. [*See*, Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series).]

- j. Other desired local distribution.

5.H. DISPOSITION OF COURT-MARTIAL RECORDS OF TRIAL [ROT]

5.H.1. Disposition of the Original

Original ROTs by court-martial, including trials that do not result in conviction, will be transmitted to Commandant (G-LMJ) after completion of all reviews and actions required to be accomplished in the field.

5.H.2. Disposition of Copies

Convening authorities and the OEGCMJ shall retain a file copy of the ROT for three years from the date the conviction is final under RCM 1209(a)(2), or until the conviction is final under RCM 1209(a)(1) and final action has been taken on any punitive discharge under paragraph 5.D.4 above, whichever period is greater.

5.I. SERVICE OF COAST GUARD COURT OF CRIMINAL APPEALS DECISIONS

5.I.1. General

The accused shall be provided notice of the Coast Guard Court of Criminal Appeals decision once it is announced.

5.I.1.a. Accused Serving in an Active Duty Status

Where the accused is serving on active duty a service packet (including a copy of the decision, an endorsement on the copy of the decision informing accused of the right to petition for review, a form for petition for review, and receipt) shall be forwarded by Commandant (G-LMJ) to the SJA for the cognizant OEGCMJ. The SJA shall forward the packet to the accused's immediate commanding officer who shall serve the accused, procure his or her signature on the provided receipt as evidence of service and return the executed form to Commandant (G-LMJ) via the chain of command, including the OEGCMJ.

5.I.1.b. Accused Discharged, Released from Active Duty, or on Appellate Leave

Where accused has been placed on appellate leave, released from active duty, or discharged, the service packet as described in subparagraph 5.I.1.a above, shall be forwarded by Commandant (G-LMJ) directly to the accused by certified mail.

5.I.1.c. Accused Absent Without Leave

If the attempted service of the decision, as contemplated by subparagraph 5.I.1.a above, is unsuccessful, a certificate of attempted service [*see*, enclosure (20)] will be prepared by the officer attempting service. The certificate shall detail all attempts at service and returned along with the undelivered decision to Commandant (G-LMJ) via the chain of command, including the OEGCMJ. If service by mail was unsuccessful service by publication may be initiated by Commandant (G-LMJ) in accordance with *U.S. v. Myers*, 28 M.J. 191 (C.M.A. 1989).

5.I.1.d. Power of Attorney Executed by Accused Authorizing Service on Defense Counsel

Service of the decision may be made upon appellate or trial defense counsel in those cases where accused has executed a power of attorney authorizing service of the decision on defense counsel. [*See, U.S. v. Larnear*, 3 M.J. 76 (CMA 1977).]

5.I.2. Service of Decision Following Government Appeal or Petition for Extraordinary Relief

a. Following a decision of the Coast Guard Court of Criminal Appeals or the Court of Appeals for the Armed Forces on a government appeal or a petition for extraordinary relief, Commandant (G-LMJ) shall cause a copy of the decision to be served on trial counsel, defense counsel, the convening authority, and the military judge. Service by mail or other expeditious means is authorized.

b. Upon receipt of a copy of the decision trial may proceed, if authorized, consistent with the decision of the appellate court unless the trial is stayed by order of a higher court.

5.J. APPLICATION FOR RELIEF UNDER ARTICLE 69(B), UCMJ

5.J.1. Statutory Provisions

Article 69(b), UCMJ cases are either special court-martial cases in which no bad conduct discharge is adjudged or summary courts-martial. Under Article 69(b), the Judge Advocate General may review these cases upon application of the accused or, if there is no application of the accused, on a discretionary basis. The Judge Advocate General may refer Article 69(b), UCMJ, cases to the Coast Guard Court of Criminal Appeals. With the exception of the authority to refer cases to the Coast Guard Court of Criminal Appeals under Article 69(d), UCMJ, the Chief Counsel of the Coast Guard has been delegated authority to act on applications submitted under this section.

5.J.2. Time Limitations

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

5.J.3. Submission Procedures

Applications for relief shall be submitted to the Chief Counsel via Commandant (G-LMJ) by letter. If the accused is on active duty the application shall be submitted via the applicant’s commanding officer, the command that convened the court, and the command that reviewed the case under Article 64(a) or (b), UCMJ. The endorsement shall include information and specific comment on the grounds for relief asserted in the application and an opinion on the merits of the application. If the applicant is no longer on active duty the application may be submitted directly to the Chief Counsel via Commandant (G-LMJ).

5.J.3.a. Contents of Applications

All applications for relief shall contain:

- (1) The full name of the applicant;
- (2) Social security number and branch of service, if any;
- (3) Present grade if on active duty or retired, or “civilian” or “deceased” as applicable;
- (4) Address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);
- (8) Command title of the OEGCMJ over the applicant at the time of trial (if applicable);
- (9) Type of court-martial that convicted the applicant, and sentence adjudged;
- (10) General grounds for relief, which must be one or more of the following:
 - (a) Newly discovered evidence;
 - (b) Fraud on the court;

- (c) Lack of jurisdiction over the accused or the offense;
 - (d) Error prejudicial to the substantial rights of the accused; or,
 - (e) Appropriateness of the sentence.
- (11) An elaboration of the specific prejudice resulting from any error cited. Legal authorities to support the applicant's contentions may be included and the format used may take the form of a legal brief if the applicant so desires;
 - (12) Any other matter that the applicant desires to submit;
 - (13) The specific relief requested;
 - (14) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in paragraph 5.J.2 above, if applicable; and
 - (15) If the application is signed by a person other than the applicant pursuant to subparagraph 5.J.3.b below, an explanation of the circumstances rendering the applicant incapable of making application.

5.J.3.b. Signatures on Applications

Unless incapable of making application the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter. In this regard, applicant is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

5.J.3.c. Consideration of Application

When an application has been properly submitted, it will be reviewed together with the original ROT in the Office of the Chief Counsel. The applicant will be notified of the action taken or decision rendered in response to the application for relief.

5.K. PETITION FOR NEW TRIAL UNDER ARTICLE 73, UCMJ

5.K.1. Statutory Provisions

[See, Article 73, UCMJ; RCM 1210.]

An accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General

shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

5.K.2. Time Limitations

If the petition for new trial was placed in military channels within two years after approval of a sentence by the convening authority (regardless of the date of its receipt by the Chief Counsel it shall be considered to have been timely filed. Except in extraordinary circumstances the Chief Counsel will not act upon petitions until all reviews contemplated by Article 65, UCMJ, have been completed.

5.K.3. Submission Procedures

The petition shall be submitted directly to the Chief Counsel for action pursuant to paragraph 5.K.5 below.

5.K.4. Contents of Petitions

The form and contents of petitions for new trial are specified in RCM 1210(c). In addition the petition shall include the command title of the OEGCMJ over the petitioner at the time of trial.

5.K.5. Action on the Petition

a. If the case is pending before the Coast Guard Court of Criminal Appeals or the Court of Appeals for the Armed Forces, the petition shall be referred for action to the appropriate court. If referred for action to the Coast Guard Court of Criminal Appeals that Court shall take action in accordance with Courts of Criminal Appeals Rules of Practice and Procedure.

b. In all other cases the Chief Counsel shall return the petition for compliance with the procedural requirements of RCM 1210(c) and paragraph 5.K.4 above.

5.L. RESIDUAL CLEMENCY: AUTHORIZED OFFICIALS

Secretary, Department of Transportation has delegated the authority contained in Article 74(a), UCMJ, to remit or suspend any unexecuted portions of any sentence to certain commanding officers, under certain specific conditions [*see*, Article 8.F.6.d., Coast Guard Personnel Manual, COMDTINST M1000.6 (series)] A copy of that authorization is contained in enclosure (9).