U.S. Department of Homeland Security

United States Coast Guard

Subj: USCG POST-TRIAL PROCESSING GUIDE

Ref: (a) Manual for Courts-Martial (2019)
(b) User Guide and Business Rules CMS (Wolverine)
(c) Military Justice Manual, COMDTINST M5810.1 (series)
(d) USCG Court Rules of Practice and Procedure

Encl: (1) Statement of Trial Results
(2) Post-Trial Checklist
(3) Victim Post-Trial Rights Statement
(4) Convening Authority's Action Checklist
(5) Post-trial Reporting Requirements to Comply with Gun Control Act
(6) Convening Authority's Action and Entry of Judgment Template
(7) DD Form 490 – Record of Trial
(8) Record of Trial Verification and Certification Forms
(9) Assembly of Record of Trial Instructions

1. Purpose. The purpose of this guide is to establish minimum requirements for post-trial processing of records of trial (ROT) and to update and reissue post-trial checklists for trial counsel, Staff Judge Advocates (SJA), and trial judges for use during the court-martial review process. These procedures are intended to ensure expeditious and efficient handling of cases from sentencing through the certification of the ROT. This guide recommends the use of enclosures (1) through (9) throughout the post-trial process.

2. Applicability. This guide applies for all cases referred to a court-martial on or after 1 January 2019. For all cases where the accused was convicted of offense(s) committed before 1 January 2019, but the charge(s) were referred on or after 1 January 2019, ensure the appropriate clemency authority is utilized. See enclosure (6) for guidance.

3. Scope. This guide is intended to aid all parties involved in any portion of post-trial processing, including Convening Authorities, Staff Judge Advocates, Trial Counsels, and legal support staff. Utilize references (a) through (d), in addition to this guide, throughout the post-trial process.

4. Discussion

a. The government will ensure timely post-trial processing of military justice cases. In all general and special courts-martial in which the judgment includes a finding of guilty, the certified ROT and attachments required under Rules for Courts-Martial (R.C.M.) 1112(b) and (f) will be prepared. A verbatim transcript will be prepared when required by R.C.M. 1114. For all courts-martial resulting in a sentence of confinement for six months or less and

no punitive discharge, the government must ensure a certified ROT with all required attachments is reviewed by a judge advocate pursuant to Article 65(d), Uniform Code of Military Justice (UCMJ).

(1) For all courts-martial resulting in appellate review under Article 66(b)(3), UCMJ, (automatic appeals) the government must ensure: (1) the certified ROT together with all required attachments is forwarded as soon as practicable after the Entry of Judgment (EOJ) to the Office of Military Justice (CG-LMJ), and in all cases the certified ROT and all required attachments must be completed and forwarded for appellate review within 120 days of the announcement of sentence (Post-Trial I), and (2) the case is docketed at the Coast Guard Court of Criminal Appeals (CGCCA) within 30 days after forwarding (Post-Trial II). The CGCCA will then issue an opinion, ordinarily within 18 months after the case is docketed (Post-Trial III).

(2) For all courts-martial resulting in appellate review under Article 66(b)(1), UCMJ, (appeals by accused) the government must ensure: (1) the certified ROT together with all required attachments is forwarded as soon as practicable after the EOJ to CG-LMJ, and in all cases the certified ROT and all required attachments must be completed and forwarded for appellate review within 120 days of the announcement of sentence (Post-Trial I), and (2) CG-LMJ mails notification of an accused's right to file an appeal under Article 66(b), UCMJ, within 10 days of receipt of the certified ROT (Post-Trial II). The case will be docketed with CGCCA if the accused files a notification of an appeal within 90 days of the certified mailing (date of postmark) to the accused in accordance with Articles 65(c) and 66(c). The CGCCA will then issue an opinion, ordinarily within 18 months after the case is docketed (Post-Trial III).

b. Per reference (a), the adjudged sentence, the type of court-martial (General Court-Martial (GCM)/Special Court Martial (SPCM)/Summary Court Martial (SCM)), and whether the government has filed an appeal dictate the type of review:

(1) Article 64: Judge advocate review of a finding of guilty in a SCM. If the accused appeals the results of this review, CG-LMJ shall process the case for review under Article 69.

(2) Article 65: A review under Article 65 occurs in two scenarios: (1) any GCM or SPCM in which the sentence includes six months or less of confinement and no punitive discharge, or (2) if the sentence otherwise qualifies for automatic review in accordance with Article 66(b)(3) and the accused waived or withdrew their appeal under Article 66. A judge advocate in the Office of the SJA to the CA will conduct the Article 65 review if the sentence includes six months or less of confinement and no punitive discharge, or if the accused waives appellate review. If the accused withdraws from appellate review, an attorney designated by TJAG shall conduct the review.

(3) Article 66(b)(1)(A): Appeal by an accused in a case in which the sentence extends to confinement for more than six months and the case is not subject to an automatic appeal.

(4) Article 66(b)(1)(B): Appeal by an accused in a case where the government previously filed an appeal under Article 62.

(5) Article 66(b)(1)(C): Appeal by the accused in a case that the government appealed the sentence pursuant to Article 56(d).

(6) Article 66(b)(1)(D): Appeal by an accused filed under an application for review with the CGCCA under Article 69(d)(1)(B) and the application was granted by the court.

(7) Article 66(b)(3): Any sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge, or bad-conduct discharge, or confinement for two years or more receives an automatic appeal at the CGCCA.

(8) Article 69: Any review of an Article 64 or Article 65 appeal requested by an accused.

(9) Article 69(d)(1)(A): Case that is sent to the CGCCA by order of the Judge Advocate General (JAG).

c. All courts-martial shall be tracked electronically using the Sea Services Case Management System, known as Wolverine. Reference (b) contains the rules and user guide for Wolverine. Wolverine will serve as the primary source for court-martial data. Article 140a, UCMJ, and the DoD CG memo of 17 Dec 2018 requires the collection and analysis of data in accordance with the standards prescribed by the Secretary of Defense.

5. Action

a. Each trial counsel shall use enclosure (1) when preparing the Statement of Trial Results. This document will include the contents required under R.C.M. 1101(a), including, but not limited to:

(1) For each charge and specification referred to trial—

(a) a summary of each charge and specification;

(b) the plea(s) of the accused; and

(c) the finding or other disposition of each charge and specification.

(2) The sentence of the court-martial and the date the sentence was announced; include the amount of credit, if any, applied to the sentence for pretrial confinement or other reasons. If the accused was convicted of more than one specification and any part of the sentence was determined by a military judge, the Statement of Trial Results shall also specify—

(a) the confinement and fine for each specification, if any;

(b) whether any term of confinement is to run consecutively or concurrently with any other term(s) of confinement;

(c) the total amount of any fine(s) and the total amount of any confinement, after accounting for any credit and any terms of confinement that are to run consecutively or concurrently.

(3) The type of court-martial and the command that convened the court-martial.

(4) In a case with a plea agreement, the statement shall specify any limitations on the punishment as set forth in the plea agreement.

(5) If the military judge recommends that the convening authority (CA) suspend any portion of the sentence or if the military judge makes any other clemency recommendation, the Statement of Trial Results shall specify—

(a) the portion(s) of the sentence to which the recommendation applies;

(b) the minimum duration of the suspension;

(c) the recommended clemency; and

(d) the facts supporting the suspension or other clemency recommendation.

(6) the names of any co-accused shall be noted in the "Notes" block;

(7) If required under 10 U.S.C. § 1565, the requirement for processing of a deoxyribonucleic acid (DNA) sample;

(8) If required under 42 U.S.C. § 14071 or DoDI 1325.07, the requirement for sex offender registration; and

(9) A statement as to whether any offense for which the accused was convicted is a crime that triggers firearm possession prohibition in accordance with 18 U.S.C. § 922 and whether such a crime is a crime of domestic violence. See enclosure (5) for further details and definitions of the terms included in this sub-paragraph and crime reporting requirements generally.

b. Upon request, the counsel for the accused and counsel for any crime victim, as defined by R.C.M. 1106A, may receive a copy of the recording of all open sessions of the court-martial and, unless sealed, access to the evidence admitted at the court-martial and appellate exhibits in order to facilitate the preparation of matters submitted to the CA. Recordings of closed sessions, classified material, or any other matters ordered sealed may not be released unless otherwise authorized by the military judge. If an accused or victim is unrepresented, a copy of the recording of all open sessions of the court-martial will be provided directly to the accused or victim upon request. This information should be provided within five business days after

receiving a proper request, unless otherwise impracticable. Prior to releasing any recording of the court-martial proceedings, an instruction all be included with the recording limiting the use of the audio recording to the submission of post-trial matters under R.C.M. 1106 and R.C.M. 1106A.

c. The accused and any crime victim shall be afforded 10 days after the announcement of the sentence to submit matters for consideration pursuant to R.C.M. 1106 and R.C.M. 1106A. Both the accused and the crime victim may be given an additional 20 days by the CA to submit matters upon the CA's receipt of a proper request.

d. The accused will be given an additional five days to respond to any matters submitted by a crime victim. All R.C.M. 1106 and R.C.M. 1106A matters submitted by the accused or crime victim should be submitted to the CA via the SJA.

e. As soon as practicable after the announcement of the sentence, in order for the CA to review during the post-trial process trial counsel shall provide access to the SJA the following: (1) the recording of all open sessions of the court-martial; (2) unless sealed, copies of, or access to, the evidence admitted at the court-martial, and appellate exhibits; and (3) all matters submitted by the accused and crime victim that were not previously provided directly to the SJA for the CA. If a CA wishes to review any sealed portion of the record, including classified evidence, a request must be submitted to the military judge.

f. The CA, after consultation with the SJA, will determine what action, if any, will be taken. The CA's power to grant clemency is based on the date of the earliest offense of which the accused was convicted. The following is provided as guidance to determine clemency authority:

(1) For cases **referred** to trial on or after 1 January 2019, the following CA action procedures apply:

(a) If all of the offenses of which the accused was convicted occurred **after** 1 January 2019, the post-trial procedures contained in this guide, in Articles 60a and 60b, UCMJ, 10 U.S.C. §§ 860a, 860b (eff. Jan. 1, 2019), and in R.C.M. 1109 and 1110, MCM 2019, shall apply.

(b) If the accused is convicted of any offense that occurred **before** 1 January 2019, but **on or after** 24 June 2014, the clemency authority described in Article 60, UCMJ, 10 U.S.C. § 860 (as amended by the FY14 and FY15 NDAAs), will apply, and the post-trial procedures contained in this guide and all enclosures shall be utilized. A Staff Judge Advocate Recommendation (SJAR) will not be created in these cases.

(c) In a case in which the accused is convicted of any offense that occurred **before** 24 June 2014, the clemency authority described in Article 60, UCMJ, 10 U.S.C. §860 (2012), will apply, and the post-trial procedures contained in this guide and all enclosures shall be utilized. An SJAR will not be created in these cases.

(d) The CA's suspension authority outlined in Article 60a(c), the authority to act on a military judge's suspension recommendation, applies regardless of the date of any conviction, even if the operative version of Article 60 does not permit such suspension.

(e) Regardless of which version of clemency authority applies, and even if the CA decides to take no action, the SJA will ensure that the CA complies with the requirements of R.C.M. 1109(g) and the action is documented using enclosure (6).

g. The SJA shall ensure the CA uses enclosure (6) to document the action taken in a case. This document shall be provided to the trial counsel that conducted the court-martial as soon as practical. In an effort to support the timely completion of post-trial matters, trial counsel shall be available to support CAs in completion of enclosure (6). Upon receipt of the CA's Action, the trial counsel shall ensure the accused and crime victim are served a copy of the action as soon as practicable.

h. The trial counsel shall compile the ROT for certification. Each ROT must be prepared using the DD Form 490 – Record of Trial (Enclosure 7). The certified ROT is the official record of a court-martial and will be prepared as described in R.C.M. 1112. All certified ROT must contain all items listed in R.C.M. 1112(b), and additionally all items listed in R.C.M. 1112(f) for courts-martial that result in a guilty finding.

i. A verbatim transcript must be included in the certified ROT if the judgment entered into the record includes a sentence of death, dismissal, dishonorable or bad-conduct discharge, or confinement for more than six months. See RCM 1114(a)(1). Upon completion of the verbatim transcript, the transcriptionist and the court reporter (if not the transcriptionist) will certify the accuracy of the transcript and attach that certification to the transcript. The certification is provided in enclosure (8).

j. The court reporter is responsible for ensuring the completeness and accuracy of the ROT, including the verbatim transcript. The court reporter will compile the ROT in accordance with R.C.M. 1112(b) for acquittals, with the exception of a transcript, and R.C.M. 1112(b) and R.C.M. 1112(f) for all cases that resulted in a guilty finding. In all cases that result in a guilty finding, the court reporter must provide the ROT and the verbatim transcript, if required by R.C.M. 1114, to the military judge for verification. The court reporter shall forward the ROT and the verbatim transcript to the military judge for verification, ensuring the ROT includes all contents required by R.C.M. 1112(b) and R.C.M. 1112(f). The military judge is not required to verify ROTs in cases that result in a full acquittal.

k. As soon as practicable after the military judge is notified of the CA's action, or decision not to take action, the military judge will enter the judgment of the court-martial. The trial counsel will prepare a draft EOJ for the military judge's signature using Enclosure (6). The trial counsel shall provide a copy of the completed EOJ to the accused, designated defense counsel, CA, and upon request, the crime victim or victim's counsel. The EOJ and certified ROT may be delivered concurrently.

l. Once the ROT is compiled in accordance with R.C.M. 1112(f), the military judge must verify the ROT and all attachments, including the accompanying verbatim transcript. Documentation of the military judge's verification must be attached to the certified ROT before forwarding the certified ROT for appellate review using enclosure (8). The military judge must complete this verification and sign the EOJ within 20 days of receipt of the ROT. If a military judge is unable to verify the ROT and accompanying verbatim transcript within 20 days, documentation of the reasons for delay must be added to the ROT.

m. After the military judge verifies the ROT and accompanying verbatim transcript, the court reporter will certify the ROT is prepared in accordance with R.C.M. 1112(f) using enclosure (8). Prior to certification of the ROT pursuant to R.C.M. 1112(f), enclosure (2) must be completed and attached to the certified ROT.

n. If requested, and in accordance with R.C.M. 1112(e)(1), a copy of the certified ROT will be provided to (1) any victim of an offense of which the accused was charged if the victim testified during the proceeding and (2) any victim named in a specification for which the accused was charged, without regard to the findings of the court-martial. If any victim requests the certified ROT be provided directly to them, they must provide an address for the ROT to be delivered. Additionally, the ROT, as provided to the victim, must not include any classified or sealed information, recordings or transcripts of closed sessions. If a court-martial involves two or more crime victims, any closed session pertaining to one crime victim must be redacted from the recording or transcript provided to all other crime victims (*See*, Military Rules of Evidence (M.R.E.) 412, M.R.E. 513, and M.R.E. 514 hearings.) Pursuant to Ch. 21.F.2 and 3, the ROT provided to the accused does not need to be redacted; however, the ROT provided to the victim needs to be redacted for PII.

o. An accused is also entitled to receive a copy of the certified ROT. If any accused requests the certified ROT be provided directly to them, they must provide an address for the ROT to be delivered. Prior to providing the certified ROT to the accused, the audio recording of the court-martial proceedings may be replaced with a verbatim transcript. The ROT, as provided to the accused, must not include any classified or sealed information, or transcripts of closed sessions.

p. A certified ROT must be completed and forwarded for appellate review no later than 120 days from the announcement of the sentence. If trial counsel is unable to forward a ROT for appellate review within 120 days, documentation of the reasons for delay must be added to the ROT.

q. For cases containing classified information, prior to forwarding the certified ROT for appellate review, CG-LMJ must be informed that the original certified ROT contains classified information. CG-LMJ will advise on how to handle ROT with classified information. Regardless, any ROT containing classified information must be packaged and transmitted in accordance with the Classified Information Management Program, COMDTINST M5510.23 (series).

r. In order to ensure compliance with the Adam Walsh Act, 18 U.S.C. § 3509(m), sealed exhibits containing child pornography must not be copied, and the actual child pornography material must not be included with the original ROT. At the conclusion of trial, the original sealed exhibit containing child pornography, whether physical or digital, must be turned over to the servicing Coast Guard Investigative Service office. A one-page memorandum explaining these procedures and where the sealed exhibit is located will be inserted in place of the exhibit. Once the ROT is complete and received by the Office of Military Justice (CG-LMJ) the original sealed exhibit containing child pornography will be sent from the servicing CGIS office to CGIS Headquarters, in accordance with CGIS policy and requirements for transportation of such contraband, where it will be held pending appellate review. When a case is final in accordance with RCM 1209, the CG-LMJ will inform CGIS Headquarters and the child pornography exhibits may then be destroyed.

s. In addition to the original ROT, an electronic copy of the ROT, including the certified transcript, shall be created. The electronic copy must be an exact duplicate of the hardcopy ROT and be in a portable document format (pdf). That electronic ROT will be maintained on a CD or DVD and mailed to CG-LMJ.

t. The trial counsel responsible for prosecuting the case retains primary responsibility to proactively monitor the completion of required post-trial actions, document action taken and/or reasons for delay in every stage of the post-trial process, and forward completed ROTs to appellate authorities.