POST-TRIAL CHECKLIST

R.C.M. 1112 and 1114

For Courts-Martial Resulting in a Conviction

ICO _____

Phase I: Post-Trial Submissions

_____ Statement of Trial Results (STR) – Obtained and verified for accuracy. Use Enclosure (1) as the template for the STR.

____ Findings

____ Sentencing

____ Type of court-martial (GCM, SPCM)

____ Composition/Forum of court-martial (Members, Enlisted Members, Judge Alone)

____ Plea agreement

____ Suspension recommendations by the military judge or trial counsel, if applicable

____ Reporting Requirements Identified:

____ DNA processing?

____ Sex offender registration?

____ Gun Control Act of 1968 reporting?

____ Reporting of background or criminal record information?

____ Statement of Trial Results must be compliant with DD Form 2707-1, or other prescribed form.

____ **[Gun Control Act Requirements]** Verify CGIS received Statement of Trial Results for entry into NICS and to satisfy Gun Control Act requirements. See enclosure (5) for detailed information about crime reporting requirements under the Gun Control Act of 1968.

____ Verify the victim or victims' legal counsel received the Victim's Rights Statement advising the victim of rights in the post-trial and appellate process. (Enclosure 3)

- Date completed: _____

____ UPON REQUEST, trial counsel provides a copy of the audio recording to the defense counsel (or directly to the accused, if unrepresented) and access to all appellate exhibits, prosecution exhibits, and defense exhibits. Along with a copy of the recording, the trial counsel should include the following instruction: "This CD or DVD contains a copy of the court-martial proceedings in the case of U.S. v. _____ and may contain Personally Identifiable Information (PII). The contents of this CD or DVD are to be used solely for the submission of matters for the convening authority to consider pursuant to R.C.M. 1106 or 1106A. This CD or DVD shall not be distributed to anyone outside the court-martial process."

- Date provided to the defense counsel or accused: _____

____ UPON REQUEST, trial counsel provides a copy of the audio recording to the special victim counsel (or directly to the victim if unrepresented) and access to all appellate exhibits, prosecution exhibits, and defense exhibits. Along with a copy of the recording, the trial counsel should include the following instruction: "This CD or DVD contains a copy of the court-martial proceedings in the case of U.S. v. _____ and may contain Personally Identifiable Information (PII). The contents of this CD or DVD are to be used solely for the submission of matters for the convening authority to consider pursuant to R.C.M. 1106 or 1106A. This CD or DVD shall not be distributed to anyone outside the court-martial process."

- Date provided to the victim legal counsel or victim: _____

____ Obtain matters submitted by the accused, if applicable

- Date Received: _____
- No matters submitted by the accused _____

____ Obtain matters submitted by the victim, if applicable

- Date Received: _____
- No matters submitted by the victim: _____

____ Obtain rebuttal matters submitted by the accused, if applicable

- Date Received: _____
- No rebuttal matters submitted: _____

<u>Phase II: Send Post-Trial Matters to CA for Action</u>

____ Trial Counsel delivers a recording of the court-martial proceedings, copies of exhibits admitted at trial, copies of appellate exhibits, and all matters submitted by the accused and the victim to the Convening Authority (CA) via their SJA for action. (NOTE: IF MAILED, SEND CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR OTHER MOST EXPEDITIOUS,

ACCOUNTABLE METHOD. MUST HAVE A TRACKING NUMBER AND TRACKING NUMBER MUST BE PROVIDED TO THE RECIPIENT).

- Date provided to the CA: _____
- Date received signed/completed CA's Action_____

____ Forward a copy of the CA's action to the accused and/or defense counsel and the crime victim or victim legal counsel, if applicable.

- Date completed: _____

____ The Trial Counsel should prepare a draft Entry of Judgment for the military judge's signature based on the CA's Action. Ensure CA's Action is documented using Enclosure (6).

____ Forward a copy of the CA's Action and draft Entry of Judgment to the military judge for review and signature.

- Date completed: _____

Phase III: Prepare the Certified Record of Trial

____ Prepare the verbatim transcript in accordance with R.C.M. 1114. Begin doing this immediately after the announcement of the sentence and simultaneously with the post-trial process.

- A verbatim transcript of the audio recording contained in the ROT per RCM 1112(b)(1) is required in any case where 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). In such cases, the Trial Counsel is responsible for sending a copy of the audio recording to a contracted transcriptionist as soon as practicable after final adjournment, to be completed in no more than 30 days from receipt.
- The pages of the transcript from any closed hearings are placed inside a sealed manila envelope. The envelope is labeled to indicate the nature of the closed hearing (e.g., M.R.E 412 hearing called to order at (time) on (date)) and a sealing order is attached to the envelope.

____ Send audio out to be transcribed.

- Date audio sent to transcriptionist: _____
- Date received completed transcript: _____

____ Ensure transcriptionist, if different from the court-reporter, provided a certification of the accuracy of the transcript. For purposes of certification of a written transcript under R.C.M. 1114, certification of a written transcript means the person who prepared the

written transcript attests that it is a true, accurate, and complete copy of that audio or other electronic recording of the court-martial proceeding. This following certification statement will be placed on the cover sheet of the written transcript: "I (name of person preparing and/or certifying the written transcript) certify that this written transcript is a true, accurate, and complete copy of the audio or other electronic recording of the court-martial proceeding in the case of (insert case name, e.g., *U.S. v. Accused*), which was held at (name of location, e.g., Coast Guard Base Alameda), on (dates court-martial was held, e.g., 13-15 March 2019)." The transcriptionist that certifies a written transcript will place their signature and the date of the certification directly below the certification statement.

- Date of transcript certification by the transcriptionist: _____

____ Prepare the certified record of trial, R.C.M. 1112(b) and (f) using DD Form 490 (Enclosure 7) and Assembly instructions (Enclosure 9) – Include the following:

____ **Post-Trial Documents:**

____ Insert Statement of Trial Results.

____ Insert CA's Action and matters submitted by accused and victim.

____ Upon receipt of CA's Action, review it to ensure compliance with R.C.M. 1109(g) or 1110(e) and that Enclosure (6) is used. Also ensure the CA's Action Checklist (Enclosure (4)) is complete.

____ Insert other matters submitted by accused or defense counsel to the record of trial.

____ Deferment requests

____ All clemency requests/recommendations

____ Other matters

____ 10-day waiting period complied with or extension granted (in writing)

____ Declination to submit matters

____ Insert any matters submitted by the victim or victim's counsel.

____ 10-day waiting period complied with or extension granted (in writing)

____ Declination to submit matters

____ Insert any rebuttal matters submitted by the accused or defense counsel in response to the victim's matters.

____ Insert Entry of Judgment (After receipt from Military Judge)

____ Verify information is accurate, in compliance with R.C.M. 1111, and Enclosure (6) is used.

____ Post-trial motions and record of proceedings. The record of post-trial sessions should be prepared, certified, and provided in accordance with R.C.M. 1112 and should be included in the record of trial.

____ Post-trial hearing for person found not guilty only by reason of lack of mental responsibility pursuant to R.C.M. 1105. The session should be prepared and certified and appended to the record of trial.

____ Record from a vacation hearing pursuant to R.C.M. 1108(d).

____ **Preliminary Hearing Documents -** Attach the following items to the record of trial in any case where an Art. 32 preceded referral of charges, whether charges were ultimately referred to a GCM or to a SPCM:

____ Art. 32 appointing order

____ Report of Art. 32 Preliminary Hearing (DD Form 457)

____ SJA's Art. 34 pretrial advice letter

____ Waiver of Art. 32, if applicable

____ **Pre-Trial Allied Papers**

____ Insert charge sheet in record of trial. (Confirm all supplemental pages are attached, front and back).

____ Insert convening order in record of trial.

____ Insert amending orders, if any.

____ A copy of the request, if any, for trial by military judge alone.

____ A copy of the accused's election of trial by enlisted members.

____ Any statement by the convening authority pursuant to R.C.M. 503(a)(2) explaining why it was not possible to comply with request for enlisted members, if applicable.

____ The accused's election for sentencing by members in lieu of sentencing by military judge under R.C.M. 1002(b), if applicable.

____ Record of Proceedings

____ Audio Recording of entire court proceedings except sessions closed for deliberations and voting.

____ If the court-martial contained closed sessions, include one copy of the audio recording with the closed court sessions on a separate CD or DVD. The redacted CD(s) or DVDs should be marked with a permanent fine point marker "[Redacted] Audio Recording of U.S. v. _____ # 1 of _____." Do not place any physical labels on CDs or DVDs as they can make the media unreadable.

____ All Prosecution Exhibits

____ Sealed exhibits with the exception of child pornography (e.g. mental health records, contraband, etc.) placed inside a sealed manila envelope.

- A copy of the court order sealing the exhibit is affixed to the top of the sealed envelope containing the exhibit.
- The sealed envelope is labeled on the outside with a general description of the contents.
- Contraband exhibits on electronic media must be encrypted; the password to unencrypt the files must be sent to the CG-LMJ custodian of records via email.

____ No child pornography may be included in the ROT. Insert a one page memorandum in place of the child pornography exhibit, in addition to the sealing order, to explain CGIS retained the original exhibit containing child pornography.

____ If the ROT contains classified documents, ensure compliance with reference (c) and contact CG-LMJ.

____ All Defense Exhibits

____ Sealed exhibits with the exception of child pornography (e.g. mental health records, contraband, etc.) placed inside a sealed manila envelope.

- A copy of the court order sealing the exhibit is affixed to the top of the sealed envelope containing the exhibit.
- The sealed envelope is labeled on the outside with a general description of the contents.

- Contraband exhibits on electronic media must be encrypted; the password to unencrypt the files must be sent to the CG-LMJ custodian of records via email.

____ No child pornography may be included in the ROT. Insert a one page memorandum in place of the child pornography exhibit, in addition to the sealing order, to explain CGIS retained the original exhibit containing child pornography.

____ If the ROT contains classified documents, ensure compliance with reference (c) and contact CG-LMJ.

____ **All Appellate Exhibits** – Ensure all sealed documents are properly sealed.

____ Plea Agreement

____ Motions and responses

____ Notice of pleas

____ Notice of forum

____ Written continuance request with ruling

____ Written special findings by MJ

____ Members questionnaires

____ Voir dire questions submitted

____ Members questions

____ All findings and sentencing worksheets

____ Appellate rights statement

____ Waiver of appellate review, if any

____ Any written special findings made by the military judge.

____ Other

____ Sealed exhibits placed inside a sealed manila envelope.

- A copy of the court order sealing the exhibit is affixed to the top of the sealed envelope containing the exhibit.
- The sealed envelope is labeled on the outside with a general description of the contents.

- Contraband exhibits on electronic media must be encrypted; the password to unencrypt the files must be sent to the CG-LMJ custodian of records via email.

____ If trial was a rehearing or new or other trial of the same case, the record of trial of the previous case(s).

____ Complete the record of trial form (DD Form 490)

____ Complete chronology sheet on the back of the cover of the record of trial, document and explain post-trial processing delays.

Phase IV: Court Reporter Reviews ROT (including transcript)

____ Check administrative accuracy of all documents in the record of trial.

- Page check: ____ Number of pages, ____ Pages are sequential, ____ Front and back of all two-sided documents are included.
- ____ Validate record of trial's index sheet.
- ____ Ensure all attachments are copied and inserted into the record of trial copies.

____ Review the verbatim transcript to ensure it is complete and accurate. The court reporter is ultimately responsible for ensuring the transcript does not contain any errors. A thorough review of the transcript must be performed before the transcript is included in the record of trial and before being provided to the military judge.

Phase V: Entry of Judgment and Verification of Record by Military Judge

_____Provide MJ with audio record of trial and all attachments prepared in accordance with R.C.M. 1112(f) and the verbatim transcript for the military judge's verification. At this point, the record of trial and the accompanying transcript should be complete and accurate in every respect, and ready for the court reporter to certify the record of trial.

- Although statute, R.C.M. 1112, and R.C.M. 1114 do not require the military judge to review a transcript or record of trial, as a matter of policy a record of trial should be verified by the military judge and the military judge should include a statement on the cover of the record of trial that states the following, "This record of trial and transcript were received on DATE and verified on DATE. I have reviewed the foregoing record of trial and accompanying transcript for completeness. I hereby verify that this record of trial contains all of the items required under R.C.M. 1112(f), and the pleas, findings, and sentence are accurately reflected in the transcript accompanying the record of trial."

____ Within 20 days of receipt of the ROT from the court reporter, the military judge must sign the Entry of Judgment and the verification of the ROT. If the military judge is not available, the Chief military judge should sign the Entry of Judgment. The Military Judge may complete the

EOJ prior to certifying the ROT if any of the adjudged sentence only executes when the EOJ is complete. Use Enclosure (6) as the template.

- Date EOJ completed: _____

- Date ROT certified: _____

____ Serve the accused and/or the defense counsel with a copy of the Entry of Judgment.

- Date completed: _____

____ Provide a copy of the Entry of Judgment to the victim, if requested by the victim or victim counsel.

- Date completed: _____

____ Provide a copy of the Entry of Judgment to the accused's commander/commanding officer.

- Date completed: _____

____ Provide a copy of the Entry of Judgment to the convening authority.

- Date completed: _____

____ Provide a copy of the Entry of Judgment to CGIS.

- Date completed: _____

_____Prepare the verification of the transcript and record of trial for the military judge's signature.

- Date received completed verbatim transcript: _____

<u>Phase VI: Certification of Transcript and Record of Trial</u>

____ Court Reporter must certify the transcript is complete and accurate. For purposes of certification of a written transcript under R.C.M. 1114, certification of a written transcript means that the court reporter attests that it is a true, accurate, and complete copy of that audio or other electronic recording of the court-martial proceeding. Use enclosure (8) to certify the ROT.

- Date of transcript certification by the court reporter: _____
  - If the court reporter and/or military judge make changes to the transcript after the contracted transcriptionist certifies the transcript, it is not necessary to send the transcript back to the original contracted transcriptionist for re-certification.

____ Prepare the certification of the record of trial for the court reporter's signature.

- Use enclosure (8) to certify the record.

____ Court reporter certifies the record of trial. Certification of the record of trial occurs within 120 days after the completion of trial. Otherwise, the reason for delays must be appended to the Record of Trial.

- Date completed: _____

Phase VII: Forward Certified ROT for Appellate Review

____ **[For cases involving an appeal under Art 66]** Original certified record of trial including the audio record on CD or DVD is prepared for appellate review. All documents are scanned and saved onto a CD/DVD as well. Also include a copy of the audio in the package sent for appellate review.

- The original (including any sealed exhibits or transcripts and crime reporting documents) along with a digital copy of the original record of trial is sent to CG-LMJ) by FedEx/UPS/USPS with tracking. The digital copy may be sent via DoD Safe. No redactions.

  Custodian of Records
  Office of Military Justice (CG-LMJ)
  2703 Martin Luther King Jr. Ave. SE
  Washington, DC 20593-7213
  Office: (202) 372-3811

- Date Completed: _____
- One (1) digital copy is sent to SJA/CA;
  - Date Completed: _____
- One (1) copy is provided to the defense counsel and/or the accused. Only provide items listed in R.C.M. 1112(b).
  - Replace the audio recording of the court-martial proceedings with the verbatim transcript. Ensure the transcript is properly redacted to remove all closed sessions.
  - Date Completed: _____
  - ____ Get a signed receipt of service on defense counsel and/or accused and attach receipt to record of trial (or explanation in lieu of).

____ **[For cases involving appeal under Article 65]** Original certified record of trial and one digital copy of certified record of trial prepared.

- The original certified record of trial and one digital copy of the certified record of trial is sent to the corresponding GCMCA for RCM 1201 review;
- One (1) copy is provided to the defense and/or the accused.
    - Replace the audio recording of the court-martial proceedings with the verbatim transcript. Ensure the transcript is properly redacted to remove all closed sessions.
    - Date Completed: _____
    - ____ Get a signed receipt of service on defense counsel and/or accused and attach receipt to record of trial (or explanation in lieu of).

____ Retain copy of the certified record of trial.

____ Include with record of trial appellate court directives (i.e., orders to conduct a rehearing, supplemental orders, etc.).

For courts-martial resulting in a full acquittal

____ Create a summarized report in accordance with reference (c). A verbatim transcript is not required in full acquittals.

____ Create one copy of the certified record of trial that includes the following:

____ Insert charge sheet in record of trial. (Confirm all supplemental pages are attached, front and back).

____ Insert convening order in record of trial. (If it is a copy, ensure it is certified true).

____ Insert amending orders, if any. (If it is a copy, ensure it is certified true).

____ Insert a copy of the request, if any, for trial by military judge alone.

____ Insert a copy of the accused's election of trial by enlisted members.

____ Insert any statement by the convening authority pursuant to R.C.M. 503(a)(2) (why cannot comply with request for enlisted members.)

____ Audio Recording of entire court proceedings except sessions closed for deliberations and voting.

____ All Appellate Exhibits – Ensure all sealed documents are properly sealed.

____ Motions and responses

____ Notice of pleas

____ Notice of forum

____ Written continuance request with ruling

____ Written special findings by military judge

____ Members questionnaires

____ Voir dire questions submitted

____ Members questions

____ All findings worksheets

____ Power of attorney, if any

____ Other _____

____ **All Prosecution Exhibits**

____ Sealed exhibits with the exception of child pornography (e.g. mental health records, contraband, etc.) placed inside a sealed manila envelope.

- A copy of the court order sealing the exhibit is affixed to the top of the sealed envelope containing the exhibit.
- The sealed envelope is labeled on the outside with a general description of the contents.
- Contraband exhibits on electronic media must be encrypted; the password to unencrypt the files must be sent to the CG-LMJ custodian of records via email.

____ No child pornography may be included in the ROT. Insert a one page memorandum in place of the child pornography exhibit, in addition to the sealing order, to explain CGIS retained the original exhibit containing child pornography.

____ If the ROT contains classified documents, ensure compliance with reference (c) and contact CG-LMJ.

____ **All Defense Exhibits** – remove classified documents

____ Sealed exhibits with the exception of child pornography (e.g. mental health records, contraband, etc.) placed inside a sealed manila envelope.

- A copy of the court order sealing the exhibit is affixed to the top of the sealed envelope containing the exhibit.
- The sealed envelope is labeled on the outside with a general description of the contents.
- Contraband exhibits on electronic media must be encrypted; the password to unencrypt the files must be sent to the CG-LMJ custodian of records via email.

____ No child pornography may be included in the ROT. Insert a one page memorandum in place of the child pornography exhibit, in addition to the sealing order, to explain CGIS retained the original exhibit containing child pornography.

____ If the ROT contains classified documents, ensure compliance with reference (c) and contact CG-LMJ.

____ Insert Statement of Trial Results.

____ Insert Entry of Judgment.

- ____ Verify information is accurate.

- ____ Compare to Statement of Trial Results.
- ____ Distribute the Entry of Judgment to the following:
    - ____ The accused and/or defense counsel
    - ____ A crime victim or victim counsel, upon request
    - ____ The accused's commander/commanding officer
    - ____ The convening authority

____ Prepare the certification of the record of trial for the court reporter's signature.

- A record of trial may be certified by including a statement on the cover of the record of trial that states the following, "I (name of person certifying record of trial) certify that this record of trial contains all of the items required under R.C.M. 1112(b), and the pleas, findings, and sentence are accurately reflected in the transcript accompanying the record of trial." The courter reporter, or in accordance with R.C.M. 1112, the military judge in the court reporter's absence, who certifies a record of trial will place their signature and the date of the certification directly below the certification statement.
- Certification of the record of trial occurs within 120 days after the completion of trial. Otherwise, reason for delays must be appended to the record of trial.

____ Court reporter certifies the record of trial.

- Date completed: _____

____ Distribute the certified record of trial as follows:

- the original certified record of trial and one digital copy of the certified record of trial is sent to CG-LMJ. Date Completed: _____

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  Office: (202) 372-3811
- One (1) copy is provided to the defense and/or the accused. Only provide items listed in R.C.M. 1112(b).
    - Remove the audio recording of the court-martial proceedings and replace it with the summarized report.
    - Date Completed: _____
    - ____ Get a signed receipt of service on defense counsel and/or accused and attach receipt to record of trial (or explanation in lieu of).