Headquarters, U.S.
Marine Corps

MCO P5800.16A
PCN 10209190800

MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE: LEGADMINMAN)

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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

MCO P5800.16A
JA-2
31 Aug 99

MARINE CORPS ORDER P5800.16A W/CH 1-5

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE: LEGADMINMAN)

Encl: (1) LOCATOR SHEET

Reports Required: List, page v

1. Purpose. To update policies and procedures concerning legal and legal administrative matters.

2. Cancellation. MCO 5800.11A, MCO P5800.16, and MCO 5830.5.

3. Summary of Revision. In addition to administrative corrections and updates which will not be listed separately, this revision contains the following, substantial changes:

a. Chapters have been renamed to more accurately reflect content, and renumbered to establish groupings of related material.

b. Chapter 1 combines elements of former chapters 1 and 3, and adds substantial new material. It should be completely reviewed.

c. Chapters 2, 8, 21, and 22 are new and should be completely reviewed.

d. Chapter 3 clarifies the dating of certain UPB items and removes discussion of a separate reduction order. In lieu of a reduction order, copies of the UPB will be delivered to the Marine and forwarded to CMC (MMSB) in any case involving an unsuspended reduction. This change will be mirrored in the next revision to MCO P1400.32B.

e. Chapter 4 adds or revises: procedures for waiving boards of inquiry; a sample board of inquiry findings worksheet; minimum qualifications for BOI recorders and legal advisors; notification language concerning receipt of advance education assistance; and the requirement for a verbatim record of officer NJP proceedings.

f. Chapter 5 revises procedures for return to military control, escaped prisoners, administration of Marine detained by civil authorities (domestic or foreign), and completion of DD Form 553.

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g. Chapter 12 adds material concerning Marine Corps birthday balls and gifts to MWR activities.

h. Chapter 17 revises the list of required publications.

i. Chapter 20 contains material from former chapter 1.

4. Recommendations. Recommendations concerning this Manual are invited and should be submitted to CMC (JA-2).

5. Reserve Applicability. This Manual is applicable to the Marine Corps Reserve.

6. Certification. Reviewed and approved this date.

T. G. HESS
Staff Judge Advocate to the
Commandant of the Marine Corps

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BT
UNCLAS //N05800//
MARADMIN 135/01
MSGID/GENADMIN/CMC WASHINGTON DC/JA//
SUBJ/MCO P5800.16A CH 1. MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION /(LEGADMINMAN)//
REF/A/SECNAVINST 1920.6B/-//
NARR/REF A REVISED POLICIES, STANDARDS, AND PROCEDURES FOR THE ADMINISTRATIVE SEPARATION OF NAVY AND MARINE CORPS OFFICERS FROM THE NAVAL SERVICE.
POC/CAPT FAHRINGER/JAM HQMC/TEL: DSN 224-4250/TEL: COMM 703-614-4250/TEL: FAX 703-695-8350/DSN: 225-8350//
RMKS/1. TO DIRECT CHANGES TO THE BASIC ORDER THAT EFFECT CMC'S DELEGATION OF SHOW CAUSE AUTHORITY (I.E., THE AUTHORITY TO INITIATE AN OFFICER ADMINISTRATIVE HEARING) TO LIEUTENANT GENERALS IN COMMAND.
2. ACTION: MAKE THE FOLLOWING PEN/REPLACEMENT CHANGES AS INDICATED.
A. PAGE 4-7, PARAGRAPH 4004.1 (FORWARDING REPORTS OF NJP TO SHOW CAUSE AUTHORITY). DELETE THE FIRST THREE SENTENCES AND REPLACE WITH: "THE FIRST OEGCMA IN THE OFFICER'S CHAIN OF COMMAND SHALL FORWARD A WRITTEN REPORT OF THE OFFICER'S NJP DIRECTLY TO THE SHOW CAUSE AUTHORITY WITHIN THE CHAIN OF COMMAND OR TO THE SHOW CAUSE AUTHORITY GEOGRAPHICALLY LOCATED NEAREST TO THE COMMAND, WHICHEVER IS APPROPRIATE. THE OEGCMJ WILL PROVIDE ANY INTERMEDIATE COMMANDERS AND CMC (JAM) WITH A COPY OF THE REPORT OF NJP. IN APPROPRIATE CASES, THE SJA FOR THE SHOW CAUSE AUTHORITY MAY CONTACT INTERMEDIATE COMMANDERS (ATTN: SJA'S) FOR THE COMMANDER'S RECOMMENDATION. IF A SHOW CAUSE AUTHORITY IMPOSES NJP UPON AN OFFICER, THE SHOW CAUSE AUTHORITY SHALL RETAIN THE CASE FOR A SHOW CAUSE DECISION AND FORWARD A COPY OF THE REPORT OF NJP TO CMC (JAM)."
B. PAGE 4-10, PARAGRAPH 4006 (ADMINISTRATIVE SEPARATION PROCESSING). DELETE ENTIRE PARAGRAPH AND REPLACE WITH: "ALL LIEUTENANT GENERALS IN COMMAND ARE DESIGNATED AS SHOW CAUSE AUTHORITIES. ANY REPORTS SUBMITTED IN ACCORDANCE WITH PARAGRAPH 4004 WILL BE SUBMITTED TO EITHER THE SHOW CAUSE AUTHORITY WITHIN THE CHAIN OF COMMAND OR THE SHOW CAUSE AUTHORITY GEOGRAPHICALLY LOCATED NEAREST TO THE COMMAND FOR A DECISION WHETHER THE OFFICER SHOULD BE REQUIRED TO SHOW CAUSE FOR RETENTION. ANY SUBSEQUENT SEPARATION FOR CAUSE ACTION WILL BE TAKEN PURSUANT TO SECNAVINST 1920.6B. IF A SHOW CAUSE AUTHORITY DETERMINES THAT AN OFFICER'S CASE DOES NOT

WARRANT SEPARATION FOR CAUSE PROCESSING, THE SHOW CAUSE AUTHORITY SHALL FORWARD THE CASE TO CMC (JAM) WITH AN APPROPRIATE RECOMMENDATION. ONLY DC M&RA MAY TERMINATE SEPARATION FOR CAUSE PROCEEDINGS.

C. PAGE 4-14, PARAGRAPH 4010.2, DELETE THE FIRST SENTENCE AND REPLACE WITH: "REPORTS OF OFFICER NJP/MISCONDUCT SHALL BE FORWARDED TO THE SHOW CAUSE AUTHORITY AS FOLLOWS:"

D. PAGES 4-14 AND 4-15, PARAGRAPH 4010.3A, DELETE ENTIRE PARAGRAPH AND REPLACE WITH THE FOLLOWING: "THE SHOW CAUSE AUTHORITY WILL CONVENE OR DIRECT THE OEGCMJ OF A RESPONDENT TO CONVENE A BOI IN APPROPRIATE CASES. NOTIFICATIONS TO CONVENE BOIS ARE PREPARED FOLLOWING THE SHOW CAUSE AUTHORITY'S DECISION TO DIRECT A BOI. THE SJA FOR THE SHOW CAUSE AUTHORITY OR CMC (JAM) FOR DC M&RA WILL FORWARD THE ORIGINAL NOTIFICATION AND ORDER TO CONVENE THE BOI AND AN ADVANCE FACSIMILE COPY OF THESE DOCUMENTS TO THE OEGCMJ OF THE RESPONDENT. THE RESPONDENT SHALL BE FORMALLY SERVED WITH A COPY OF THESE NOTIFICATION DOCUMENTS, AND SERVICE OF THE COPY OF THESE DOCUMENTS CONSTITUTES THE RESPONDENT'S OFFICIAL NOTIFICATION OF PROCEEDINGS."

E. PAGES 4-15 AND 4-16, PARAGRAPH 4010.4, DELETE ENTIRE PARAGRAPH AND REPLACE WITH THE FOLLOWING: "THE OEGCMJ WILL FORWARD A REPORT OF A BOI WITH APPROPRIATE RECOMMENDATIONS TO THE SHOW CAUSE AUTHORITY WHO DIRECTED IT. THE SHOW CAUSE AUTHORITY SHALL THEN FORWARD THE REPORT OF THE BOI TO CMC (JAM) WITH APPROPRIATE RECOMMENDATIONS."

F. ANY REFERENCE TO SECNAVINST "1920.6A" SHOULD BE CHANGED TO "1920.6B".

3. SUMMARY OF CHANGES. THIS CHANGE CLARIFIES AND DIRECTS DELEGATION OF SHOW CAUSE AUTHORITY TO LIEUTENANT GENERALS IN COMMAND.

4. FILING INSTRUCTIONS. FILE THIS CHANGE IMMEDIATELY FOLLOWING THE SIGNATURE PAGE OF THE BASIC ORDER.

5. THIS CHANGE IS APPLICABLE TO ALL MARINE CORPS ACTIVITIES.

6. POC/QUESTIONS/CONCERNS: CAPT FAHRINGER, OFFICER MISCONDUCT ATTORNEY, TEL: COMM 703-614-4250/TEL: DSN 225-4250/TEL: COMM FAX: 703-695-8350/DSN 225-4250//

BT

MARADMIN 542/02
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Date signed: 10/09/2002 MARADMIN Number: 542/02 R 091300Z OCT 02
FM CMC WASHINGTON DC(n)
TO ML MARADMIN(n)
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MARADMIN 542/02
MSGID/GENADMIN/CMC WASHINGTON DC/JA//
SUBJ/MCO P5800.16A CH 2. MARINE CORPS MANUAL FOR LEGAL
/ADMINISTRATION (LEGADMINMAN)//
REF/A/DOC/CMC/YMD:MIFD/YMD:20000620//
REF/B/DOC/CMC/JA/YMD:20000725//
REF/C/MSG/CMC WASHDC MI/311550ZMAY02//
REF/D/DOC/CMC WASHDC JA/31AUG1999//
NARR/REF A IS A CMC POSITION PAPER REGARDING REVISION TO NAVMC FORM
10132 UNIT PUNISHMENT BOOK AND CHANGES TO LEGAL ADMINISTRATIVE
PROCEDURES IN SUPPORT OF NON-JUDICIAL PUNISHMENT AND COURTS-MARTIAL.
REF B IS THE SJA TO CMC COMMENT ON REF A. REF C IS MARADMIN 301/02
THAT ANNOUNCES CH 1 TO THE MARINE CORPS INDIVIDUAL RECORDS
ADMINISTRATION MANUAL (IRAM). REF D IS THE LEGADMINMAN.//
POC/CWO5 D. R. DAHNERT/LEGAL ADMINISTRATIVE OFFICER/JA-2 HQMC
/TEL: DSN 224-8661/TEL: COMM 703-614-8661//
RMARKS/1. TO DIRECT CHANGES TO CHAPTER 3 OF THE BASIC ORDER THAT
GIVES DETAILED INSTRUCTIONS IN PREPARATION OF THE UNIT PUNISHMENT
BOOK (UPB).
2. ACTION: MAKE THE FOLLOWING PEN/REPLACEMENT CHANGES AS INDICATED.
A. PARA 3006.5. "DETAILED PREPARATION INSTRUCTIONS"
A. ITEM 1. DO NOT USE CHARGE/SPECIFICATION AS IN COURTS-MARTIAL. IF
THERE ARE MULTIPLE INFRACTIONS OF AN ARTICLE OF THE UCMJ, REPEAT THE
ARTICLE AS INDICATED BELOW. ENTER THE ARTICLE(S) OF THE UCMJ VIOLATED
AND A SUMMARY OF EACH OFFENSE, TO INCLUDE DATE, TIME, AND PLACE OF THE
ALLEGED OFFENSE. EXAMPLES:
ART. 90. STRUCK CAPT SMITH WITH FISTS AT HQCO, HQBN, 3D MARDIV, AT 0930,
10 NOV 98.
ART. 90. AT CO A, 1ST BN, 7TH MAR (DEPLOYED) ON 11 MAR 98, WILLFULLY
DISOBEYED CAPT GREEN'S ORDER TO GET A HAIRCUT.
ART. 86. UA FR HQCO, HQBN, 3D MARDIV DUR THE PRD 0800, 11 NOV 98
THROUGH 2359, 15 NOV 98.
ART. 86. AT HQCO, HQBN, 3D MARDIV, FAILED TO GO AT THE TIME PRESCRIBED
TO MORNING FORMATION AT 0800 ON 11 NOV 98.
B. ITEM 2. AFTER ADVISING THE MARINE IN ACCORDANCE WITH ARTICLE 31,
UCMJ AND SECTION 0104, JAGMAN, REQUIRE THE MARINE TO INDICATE INTENTIONS
BY STRIKING OUT INAPPLICABLE PORTIONS, UNLESS THE MARINE IS ATTACHED TO
OR EMBARKED ABOARD A NAVAL VESSEL. IN SUCH CASES, STRIKE OUT WITH A
SINGLE BLACK OR BLUE-BLACK INK LINE ALL SENTENCES AFTER THE FIRST
SENTENCE. SEE SECTION 0109, JAGMAN. THEREAFTER, REQUIRE THE MARINE TO
DATE AND SIGN THE ITEM. WHEN A MARINE REFUSES TO INDICATE AN INTENTION
AND/OR REFUSES TO SIGN, PROCESS CHARGES AS A REFUSAL TO ACCEPT NJP AND
FORWARD THE UPB TO THE OFFICER EXERCISING COURT-MARTIAL JURISDICTION
FOR DISPOSITION. NOTE IN ITEM 2, "SEE ITEM 16." NOTE IN ITEM 16,
"MARINE REFUSES TO INDICATE INTENTIONS OR TO SIGN ITEM 2.
CASE FORWARDED RECOMMENDING (SPECIAL COURT-MARTIAL),
(SUMMARY COURT-MARTIAL), ETC."
C. ITEM 3. UPON ENSURING THAT THE INDIVIDUAL HAS BEEN INFORMED OF THE
RIGHTS ENUMERATED IN ITEM 2, THE IMMEDIATE COMMANDING OFFICER WILL
DATE AND SIGN ITEM 3. THIS ACTION MUST BE ACCOMPLISHED PRIOR TO
IMPOSITION
OF NJP AND THIS ITEM MUST, THEREFORE, BE DATED ON OR BEFORE THE DATE
NJP IS IMPOSED.
D. ITEM 4. AFTER ADVISING THE ACCUSED OF THEIR OPPORTUNITY TO CONSULT

WITH COUNSEL PRIOR TO ELECTING TO ACCEPT NJP, THE VIOLATION OF THE ARTICLE(S) OF THE UCMJ, AND WHETHER THEY ACCEPT NJP, THE ACCUSED WILL DATE

AND SIGN ITEM 4.

E. ITEM 5. RECORD CURRENT/PREVIOUS UA'S IN EXCESS OF 24 HOURS AND CURRENT/PREVIOUS DESERTIONS.

F. ITEM 6. ENTER PUNISHMENT IMPOSED AND DATE OF IMPOSITION. THE ENTRY "NO PUNISHMENT" IS INVALID. UNLESS A PUNISHMENT LISTED IN ARTICLE 15, UCMJ, IS LEVIED AT THE PROCEEDINGS, NJP HAS NOT BEEN IMPOSED AND NO RECORD WILL BE MAINTAINED IN THE UPB BINDER. SAMPLE FORMS OF AUTHORIZED PUNISHMENTS FOLLOW. CERTAIN PHRASES IN THESE EXAMPLES ARE UNDERSCORED MERELY TO HIGHLIGHT AREAS WHERE DEVIATION FROM THE PRESCRIBED WORDING, FREQUENTLY HAS RESULTED IN AMBIGUITY. OTHER GUIDANCE IS PROVIDED IN PARENTHESES. UPB FORM ENTRIES NEED NOT CONTAIN UNDERLINES OR REFERENCES.

RESTR TO THE LIMITS OF HQSVCCO, 1ST BN, 3D MAR FOR 14 DAS, W/O SUSP FR DU.

2 JUN 98. (SEE PAR. 5C(2) OF PART V, MCM, 1998.)

FORF OF $100 PAY PER MONTH FOR 2 MONTHS. TOTAL FORF $200. 2 JUN 98. (ALWAYS STATE FORFEITURES IN WHOLE DOLLAR AMOUNTS.)

CORR CUST FOR 7 DAS W/SUSP FR DU. 2 JUN 98.

CORR CUST FOR 6 DAS W/O SUSP FR DU. 2 JUN 98.

RESTR TO THE LIMITS OF PLACE OF MESS, BIL, DU AND WORSHIP AND MOST DIR ROUTE TO AND FR W/O SUSP FR DU FOR 14 DAS AND EXTRA DU FOR 14 DAS, TO RUN CONCURRENTLY. 2 JUN 98.

TO BE RED TO LCPL, E-3, AND TO BE ORALLY REPRIMANDED. 2 JUN 98.

G. ITEM 7. ENTER THE DATE AND THE SPECIFIC TERMS OF THE SUSPENSION. IF NO PORTIONS OF THE PUNISHMENT ARE SUSPENDED, ENTER THE WORD "NONE." WHEN SUSPENDING ALL OR PORTIONS OF THE PUNISHMENT, THE SPECIFIC PUNISHMENT, THE LENGTH OF THE SUSPENSION, AND THE TERMS FOR AUTOMATIC REMISSION WILL BE REFLECTED. EXAMPLE:

2 JUN 98. RED TO LCPL, E-3, SUSP FOR 3 MOS, AT WHICH TIME, UNLESS SOONER VACATED, THE RED WILL BE REMITTED W/O FURTHER ACTION.

H. ITEM 8. ENTER NAME, GRADE, AND TITLE OF THE OFFICER WHO TOOK THE ACTION LISTED IN ITEM 6.

I. ITEM 9. WHEN THE OFFICER IMPOSING PUNISHMENT DETERMINES THAT THE OFFENSES ARE PROPERLY PUNISHABLE UNDER ARTICLE 15, UCMJ, THE OFFICER SO DETERMINING WILL SIGN THIS ITEM.

J. ITEM 10. ENTER THE DATE OF NOTIFICATION TO THE MARINE. THIS WILL NORMALLY BE THE SAME DATE AS ITEM 6 EXCEPT WHERE A FORMAL INVESTIGATION IS USED AS A BASIS FOR THE NJP OR NOTIFICATION IS DONE BY MAIL.

K. ITEM 11. WHEN NJP HAS BEEN IMPOSED, NOTIFY THE MARINE OF THE RIGHT TO APPEAL. (SEE PARAGRAPH 7 OF PART V, MCM, 1998, AND SECTION 0110E, JAGMAN.) THE OFFICER IMPOSING NJP SHALL DATE AND SIGN THE ITEM. THIS WILL NORMALLY BE THE SAME DATE AS ITEM 6 AND WILL, IN NO CASE, BE PRIOR TO THE DATE IN ITEM 6.

L. ITEM 12. THE MARINE UPON WHOM NJP IS IMPOSED SHALL DATE AND SIGN THIS ITEM INDICATING AN UNDERSTANDING OF THE RIGHT TO APPEAL THE NJP IMPOSED. WHEN A MARINE REFUSES TO INDICATE AN UNDERSTANDING OF THE RIGHT TO APPEAL AND/OR REFUSES TO SIGN ITEM 12, NOTE IN ITEM 12, "SEE ITEM 16" AND PLACE THE FOLLOWING ENTRY IN ITEM 16: "MARINE REFUSES TO INDICATE INTENTIONS OR SIGN ITEM 12."

M. ITEM 13. ENTER DATE OF THE APPEAL OF THE NJP. IF NOT APPEALED, ENTER THE WORDS "NOT APPEALED."

N. ITEM 14. IF AN APPEAL IS MADE, ENTER THE FINAL ACTION AND DATE THEREOF. EXAMPLES:

APPEAL DENIED - 25 JUN 98.

APPEAL GRANTED, PUNISHMENT SET ASIDE - 25 JUN 98.

RED SET ASIDE, NO FURTHER RELIEF GRANTED - 25 JUN 98.

THIS ITEM WILL BE SIGNED BY THE OFFICER ACTING ON THE APPEAL, OR IT

MAY BE SIGNED "BY DIRECTION" OF THE OFFICER ACTING ON THE APPEAL.
O. ITEM 15. ENTER THE DATE THE MARINE WAS NOTIFIED OF THE DECISION ON THE APPEAL. IF THE MARINE HAS BEEN TRANSFERRED OR DISCHARGED, ENTER THE DATE OF THE ENDORSEMENT FORWARDING THE DECISION TO THE MARINE'S NEW COMMAND OR TO THE MARINE'S PERMANENT MAILING ADDRESS.
P. ITEM 16. (1) ENTRIES ARE REQUIRED IN THIS ITEM UNDER THE FOLLOWING CONDITIONS:
(A) IF THE MARINE REFUSES TO SIGN EITHER ITEM 2 OR ITEM 12, ENTER THE FOLLOWING REMARK: "MARINE REFUSES TO INDICATE INTENTIONS OR TO SIGN ITEM 2 AND/OR ITEM 12" AS APPLICABLE.
(B) WHEN THE OFFENSES ARE FORWARDED TO HIGHER AUTHORITY FOR DISPOSITION, A GENERAL OR SPECIFIC RECOMMENDATION AS TO DISPOSITION MAY BE ENTERED. EXAMPLES:
GENERAL RECOMMENDATION - "FWD TO BNCO RECOM NJP."
SPECIFIC RECOMMENDATION - "FWD TO BNCO RECOM RED."
(C) ENTER ANY SUBSEQUENT VACATION OF ANY SUSPENDED PUNISHMENT INCLUDED IN ITEM 7 AND THE DATE OF VACATION. EXAMPLES:
FORF OF $250 PER MO FOR 1 MO IMPOSED AND SUSP ON
10 DEC 98 VACATED - 26 DEC 98.
RED TO PFC, E-2, IMPOSED ON 10 DEC 98 AND SUSP ON
15 DEC 98 VACATED - 26 DEC 98.
(D) A MARINE WHO HAS APPEALED MAY BE REQUIRED TO UNDERGO ANY PUNISHMENT IMPOSED WHILE THE APPEAL IS PENDING, EXCEPT THAT IF ACTION IS NOT TAKEN ON THE APPEAL WITHIN 5 DAYS AFTER THE APPEAL WAS SUBMITTED, AND IF THE MARINE SO REQUESTS, ANY UNEXECUTED PUNISHMENT INVOLVING RESTRAINT OR EXTRA DUTY SHALL BE STAYED UNTIL ACTION ON THE APPEAL IS TAKEN. (SEE PARAGRAPH 7 OF PART V, MCM, 1998.) AN ENTRY REFLECTING THE STAY OF PUNISHMENT WILL BE MADE. EXAMPLE:
7 DEC 98: APPEAL SUBMITTED. PUNISHMENT OF (HERE INSERT PUNISHMENT) STAYED.
(E) WHEN AN EXECUTED OR UNEXECUTED PUNISHMENT IS SET ASIDE. THIS ENTRY WILL
BE PLACED ON THE OLD UPB AND THE NEW UPB. IF THE OLD UPB IS NOT HELD AT THE COMMAND, THEN ENTER ON THE NEW UPB ONLY.
EXAMPLE:
7 DEC 98: RED TO CPL, E-4, IS SET ASIDE. ALL RIGHTS, PRIVILEGES AND PROPERTY AFFECTED WILL BE RESTORED.
(2) IN ADDITION TO THE AFOREMENTIONED REQUIRED ENTRIES, THIS ITEM MAY BE USED TO RECORD OTHER APPROPRIATE REMARKS OR INFORMATION.
Q. ITEM 17. UPON COMPLETION OF THE REQUIRED ADMINISTRATIVE ACTION, THE OFFICER RESPONSIBLE FOR THE ACTION WILL INITIAL THIS ITEM. THIS ITEM MUST BE INITIALED BY THE COMMANDING OFFICER, OFFICER IN CHARGE, OR BY AN OFFICER DESIGNATED TO SIGN "BY DIRECTION" OF THE COMMANDER. ENSURE COMPLETION OF ALL SRB AND UNIT DIARY ENTRIES.
R. ITEM 18. ENTER THE COMPLETE IDENTIFICATION OF THE MARINE'S UNIT; E.G., COMPANY/BATTERY/SQUADRON/GROUP/BATTALION.
S. ITEM 19. ENTER LAST NAME, FIRST NAME, AND MIDDLE INITIAL OF THE MARINE.
T. ITEM 20. ENTER GRADE AND PAY GRADE; E.G., LCPL, E-3.
U. ITEM 21. ENTER SOCIAL SECURITY NUMBER; E.G., 123 45 6789.
ADD THE FOLLOWING PARAGRAPH:
PARA 3006.11. "DISPOSITION INSTRUCTIONS."
1. DISPOSTION IS AS FOLLOWS:
A. FILE THE ORIGINAL IN THE SRB
B. COPY TO OFFICIAL MILITARY PERSONNEL FILE (OMPF)
C. COPY TO UNIT FILES
D. COPY TO MEMBER
3. SUMMARY OF CHANGES. THIS CHANGE CLARIFIES DETAILED INSTRUCTIONS IN PREPARATION OF THE UPB.
4. FILING INSTRUCTIONS. FILE THIS CHANGE IMMEDIATELY FOLLOWING CH 1 OF THE BASIC ORDER.
5. THIS CHANGE IS APPLICABLE TO ALL MARINE CORPS ACTIVITIES.//

MARINE CORPS ORDER P5800.16A Ch 3

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE: LEGADMINMAN)

Encl: (1) New page inserts to MCO P5800.16A

1. Purpose. To transmit new page inserts to the basic Manual.

2. Action. Remove all pages of Chapters 14 and 15 and replace with corresponding pages in the enclosure.

3. Summary of Change.

a. Chapter 14. The change modifies detailed policy guidance on permissible legal assistance services. Unnecessary provisions have been deleted. The requirement for periodic reporting has been clarified and a sample quarterly report has been added. A Guide to Naturalization Applications Based upon Qualifying Military Service has been added.

b. Chapter 15. The change modifies the support standards required for Marines with family members. It adds a Support Calculation Worksheet to aid the Commander in determining the appropriate amount to order a Marine to pay as well as a sample Order of Support. Language has been added to allow the Commander to modify the amount of a previous order and to clarify when a Commander may waive the requirement to provide support.

4. Filing Instructions. File this Change transmittal immediately following the last page of MARADIN 135/01, Change 1 and MARADMIN 542/02, Change 2, which both immediately follow the signature page of the basic Manual.

5. Certification. Reviewed and approved this date.

K. M. SANDKUHLER
Staff Judge Advocate to the
Commandant of the Marine Corps

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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

MCO P5800.16A Ch 4
JA-2
9 Jun 05

MARINE CORPS ORDER P5800.16A Ch 4

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE: LEGADMINMAN)

1. Purpose. To transmit change 4 to the basic Manual.

2. Action. Review MARADMIN 258/05 which directs significant changes to the basic Manual.

3. Filing Instructions. File this Change transmittal immediately following MARADIN 126/03,Change 3, immediately preceeding the signature page of the basic Manual.

4. Certification. Reviewed and approved this date.

K. M. SANDKUHLER
Staff Judge Advocate to the
Commandant of the Marine Corps

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MARADMIN 258/05

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Date signed: 06/09/2005MARADMIN Number: 258/05
Subject: MCO P5800 16A CH4 MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION

R 091536Z JUN 05
FM CMC WASHINGTON DC(UC)
TO AL MARADMIN(UC)
UNCLASSIFIED//
MARADMIN 258/05
MSGID/GENADMIN/CMC WASHINGTON DC JA//
SUBJ/MCO P5800.16A CH4. MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION//
POC/D. R. DAHNERT/CW05/JA/-/TEL:DSN 224-8661 /EMAIL:DAHNERTDA@HQMC.USMC.MIL//
GENTEXT/REMARKS/1. CHANGE 4 TO MCO P5800.16A, WHICH DIRECTS CHANGES TO CHAPTERS 1, 5, 6, 8, 9, 11, 12, 13, 14, 16, 19, 20, AND ADDS A NEW CHAPTER 23, BECOMES EFFECTIVE ON THE DATE OF THIS MARADMIN. THE LEGADMINMAN, WHICH DOES NOT YET INCORPORATE THIS CHANGE, THE HIGHLIGHTED TRACKED CHANGES DEPICTING CHANGE 4, AND THE SUMMARY OF REVISIONS, ARE AVAILABLE AT THE JA WEB SITE AT HTTP: SJA.HQMC.USMC.MIL.
2. CHANGE 4 TO THE LEGADMINMAN LOCATED ON THE OFFICIAL MARINE CORPS WEB SITE IS CURRENTLY BEING INCORPORATED AT ARDE, HQMC.
3. FILING INSTRUCTIONS. FILE THIS MARADMIN IMMEDIATELY FOLLOWING CH 3 OF THE BASIC ORDER.
4. THIS CHANGE IS APPLICABLE TO ALL MARINE CORPS ACTIVITIES.//

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

MCO P5800.16A Ch 5
JA-2
28 Nov 05

MARINE CORPS ORDER P5800.16A Ch 5

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE: LEGADMINMAN)

Encl: (1) Chapter 8 of LEGADMINMAN with Change 5 incorporated
(2) Summary of Changes

1. Purpose. To transmit change 5 to the basic Manual.

2. Action

a. Replace chapter 8 with enclosure (1).
b. Review enclosure 2, which directs changes to chapter 8 of the basic Manual.

3. Certification. Reviewed and approved this date.

K. M. SANDKUHLER
Staff Judge Advocate to the
Commandant of the Marine Corps

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Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE: LEGADMINMAN)

Location:_____
(Indicate the location(s) of the copy(ies) of this Manual.)

ENCLOSURE (1)

RECORD OF CHANGES

Log completed change action as indicated.

CHANGE NUMBER	DATE OF CHANGE	DATE RECEIVED	DATE ENTERED	SIGNATURE OF PERSON ENTERING CHANGE

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REPORTS REQUIRED

	REPORT TITLE	REPORT SYMBOL	PARAGRAPH
I.	Investigation of Suspected Officer Misconduct	MC-1621-04	4002.2
II.	Officer Misconduct Case Update	MC-1621-05	4002.5
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INTRODUCTION

0001. PURPOSE. This Manual is published to promulgate policies, procedures, guidance, and instructions for the administration of discipline, law, and legal matters in the Marine Corps and the Marine Corps Reserve.

0002. SCOPE

1. The provisions of this Manual set forth procedures and responsibilities for the maintenance of discipline and the administration of laws and regulations relating thereto.

2. This Manual supplements the UCMJ, the Manual for Courts-Martial, 1995 (MCM, 1995), the Manual of the Judge Advocate General of the Navy (JAGMAN), and other pertinent directives of higher authority. Provisions of the foregoing are restated herein only to the extent considered necessary for clarity, emphasis, elaboration, or convenience of reference.

3. In the event any portion of this Manual is now or hereafter in conflict with any regulation of higher authority, the provision of the regulation issued by higher authority shall be controlling. Users of this Manual are requested to bring such conflicts to the attention of CMC (JA-2).

CHAPTER 1

MILITARY JUSTICE

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CHAPTER 1

MILITARY JUSTICE

1000. SCOPE. This chapter describes major source materials for military justice; sets forth goals for trial and defense counsel conducting a trial by court-martial; provides guidance to prevent unlawful command influence; offers guidance for high-profile military justice cases; sets forth procedures and administrative instructions relating to retention of Marines on active duty pending trial by court-martial or accused of committing an offense over which a foreign country has jurisdiction; consular protection of foreign nationals subject to the UCMJ; clemency review; extension of enlistment to serve probation; instruction on the UCMJ; and signing military justice documents; and suggests the use of depositions for civilian witnesses whose evidence is needed before referral of court-martial charges.

1001. MAJOR SOURCE MATERIALS. Major source materials for military justice are the Constitution, the UCMJ, the Manual for Courts-Martial, the Manual of the Judge Advocate General, Military Justice Regulations issued by the Judge Advocate General (currently in the form of letter-type JAG instructions), and this Manual. Major secondary sources include the Military Judges' Benchbook (currently Department of the Army Pamphlet 27-9), the commercially published Military Rules of Evidence Manual, and the Rules of Court and trial guides promulgated by the Navy-Marine Corps Trial Judiciary.

1002. GOALS OF A TRIAL BY COURT-MARTIAL

1. Operating within an adversarial system of justice, the goal of a trial is the search for the truth. To provide the best opportunity to find the truth and deliver justice, a trial should have an efficient presentation of evidence and arguments to the trier of fact in a setting that promotes a sense of the importance of the outcome.

2. Counsel for both sides are expected to strive to conduct an exemplary trial. In an exemplary trial, trial time is regarded by all as precious. The members are rarely sent out for extensive arguments of counsel on points of law. Counsel are able to frame their opening statements by properly balancing fact and emotion. Direct examination educates the members step-by-step about the essential facts and circumstances of the case. Exhibits are handled expeditiously. Visual evidence is planned and prepared in advance. Objections are ruled upon promptly without excessive arguments and are limited in number. Succeeding witnesses are presented without the need for recesses and their testimony is not dragged out to fill time. A schedule of witnesses is set and respected as much as possible.

3. Cross-examination by counsel, who have fully investigated the issues, is focused, succinct, and avoids the quality of a rambling debate with the witness. Everyone has a sense that counsel know exactly where they are going. Redirect examination maintains its proper scope and further examination is rare and limited. Counsel do not vie to have the last word.

4. Closing arguments stick to the evidence and do not invite objections. Counsel are well prepared with requests for rulings or members' instructions far in advance of the time for closing arguments. Objections to the military judge’s instructions are made efficiently.

1003. COMMAND INFLUENCE

1. Courts-martial are instruments of leadership and command that have been balanced to ensure fairness to accused servicemembers. The UCMJ preserved a substantial amount of command control over military justice proceedings, but the UCMJ requires independent discretion and judgment on the part of court-martial participants. This is how the UCMJ seeks to ensure fairness while preserving the Code as an instrument of command. Unlawful command influence occurs when senior personnel, wittingly or unwittingly, act to influence court-martial members, witnesses, defense counsel, or the military judge in a court-martial case. Unlawful command influence not only jeopardizes the validity of the judicial process, it undermines the morale of military members, their respect for the chain of command, and public confidence in the military.

2. While some types of influence are unlawful and prohibited by the UCMJ, other types of influence are lawful, proper, and a necessary part of command and leadership. The prohibition against unlawful command influence does not mean that a commander may abdicate responsibility for correcting disciplinary problems or administering justice. Rather, the commander must be vigilant to ensure that command action does not encroach upon the independence of the other participants in the military justice system.

3. Lawful Command, Control and Influence. A commander may:

a. Personally dispose of a case at the level authorized for that commander.

b. Send a case to a lower level commander for that subordinate’s independent action.

c. Send a case to a higher commander with a recommendation for disposition.

d. Withdraw subordinate court-martial convening authority in whole or for particular classes or categories of cases.

e. Order charges pending at a lower level transmitted up for further consideration, including, if appropriate, referral.

f. Mentor and train subordinates in military justice, but must do so recognizing that there exists the potential for misinterpreting the commander's intentions.

4. Unlawful Command Influence. A commander may not:

a. Order a subordinate to dispose of a case in a certain way. The law gives independent discretion to each commander at every level possessing authority to convene courts-martial.

b. Select or remove court-martial members in order to obtain a particular result in a particular trial. Selection of members must be based on the criteria contained in UCMJ, Article 25. Those criteria include age and experience, education and training, length of service, and judicial temperament.

c. Pressure the military judge or court members to arrive at a particular decision or harass defense counsel.

d. Intimidate or discourage witnesses from testifying or retaliate against a witness for testifying.

e. Criticize military judges, court members, witnesses, or defense counsel in a manner that may influence them or other military judges, court members, witnesses, or defense counsel in future cases.

f. Consider or evaluate, in a fitness report, the court-martial performance of any court member or give a less favorable rating or evaluation to a defense counsel because of the zeal with which the defense counsel represented an accused servicemember.

5. Though not, strictly speaking, unlawful "command influence," commanders should not have an inflexible policy on the disposition of a court-martial case or the punishment to be imposed. A convening authority must consider each case individually on its own merits. When a convening authority considers the post-trial submissions of the accused and acts on the sentence of a court-martial, s/he may not have an inflexible attitude toward clemency.

6. A commander who is an "accuser" may not thereafter act as a convening authority. A commander who is an accuser is disqualified to act as a convening authority and must forward the charges to a superior convening authority. A commander is considered to be an accuser when s/he:

a. Formally signs and swears to the charges on a charges sheet,

b. Directs that charges be signed and sworn to by another, or

c. Has an interest, other than an official interest, in the prosecution of the accused.

1004. PUBLIC AFFAIRS AND HIGH-PROFILE MILITARY JUSTICE CASES

1. Military justice matters have sometimes become the subject of intense national, regional, and local media interest. Commanders, staff judge advocates, legal team leaders, military justice officers, and public affairs officers must be prepared to manage a court-martial or other military justice matters so that they do not become public affairs crises.

2. The following principles for managing high profile military justice matters are provided as guidance:

a. If a matter under investigation is of such significance and potential public interest that it is virtually certain to be covered by the media, consider making the matter public before the matter “leaks” to the media.

b. Assume that the media is more nimble than the command is; has sources of information the command does not have; and needs immediate education on the military justice system. Education of the media should begin immediately in the form of briefings and fact sheets available from HQMC (JAM).

c. All potential high-visibility cases will be reported to CMC(JAM) - via email or telephonically - as soon as the information becomes available. CMC(JAM) will in turn brief the SJA to CMC so that CMC can be properly notified. It is of critical importance that CMC be kept informed of military justice issues with potential public interest. High Visibility is defined as any case likely to generate media interest, or other circumstances exist that warrant the incident being brought to the attention of CMC.

d. All high-visibility cases involving officer misconduct will be reported immediately to the local SJA. The local SJA will then be responsible for entering the case in the EODN system.

e. Get control of the facts. Initially, families, the media, or law enforcement agencies may have control of the facts, leading to a series of surprises. Use every lawful power at the command’s disposal to get control of the facts. Once the parties have to come to the command for information, a high profile case can be successfully managed.

f. Establish a lawyer-public affairs team to manage the high profile case. The team must have ready access to the commander. If necessary, establish an operations center.

g. Consider obtaining a protective order from the convening authority or military judge relating to pretrial publicity.

h. Engage the media. While all information released to the media must be put through the “filters” of unlawful command influence, the Privacy Act, and rules pertaining to the release of pretrial information, often much relevant information can be released to the media. Once it is clear that the media will cover a case to its conclusion, it is generally a mistake not to engage the media or respond immediately to misinformation.

(1) If large numbers of media are in attendance, establish a media center. Assign a neutral third-party judge advocate to advise the media on military justice matters.

(2) Conduct press briefings before the proceedings in the morning and after the proceedings in the afternoon and evening.

(3) Coordinate with defense counsel and allow defense counsel to participate in the press briefings.

i. Maintain the integrity of the command, the military justice system, and the Marine Corps.

j. Keep HQMC informed and allow the Commandant and his staff to participate in the public affairs aspects of cases that affect the Marine Corps as a whole.

1005. EFFECT OF EXPIRATION OF ACTIVE SERVICE OF MARINES PENDING OR UNDERGOING SENTENCE OF COURT-MARTIAL OR ACCUSED OF COMMITTING AN OFFENSE OVER WHICH A FOREIGN COUNTRY HAS JURISDICTION

1. When, upon expiration of active service, a Marine has not been tried, or has been tried but the entire sentence has not been executed, the period of active service must be extended to complete trial, sentence and punishment, if any. The appropriate duty status code must be reported. In order to effect the extension, administrative action must be taken in accordance with MCO P1080.40_, MCTFSPRIM. The authority to cite in such cases is R.C.M. 202, MCM.

2. A Marine may not be involuntarily retained in the service beyond normal EAS for the purpose of being a witness at a trial by court-martial.

3. Marines awaiting disposition of criminal proceedings by a foreign jurisdiction are accorded statutory and regulatory protections and

benefits attendant to their status as members of the armed forces. The policy of the Marine Corps is to ensure both that the member is accorded the fullest possible protection and that the Marine Corps meets its international obligations. In implementation of this policy, the following procedures will be applied in all cases where foreign criminal jurisdiction is being, or may be, exercised over a member of the naval service (by action such as apprehension, arrest, investigation, or a filing of charges that may result in trial), and where the foreign criminal proceedings are not likely to be completed prior to the date of the member's release from service because of EAS.

a. At least one month before EAS, Marines will be offered the opportunity to extend their enlistment voluntarily for the duration of legal proceedings and any subsequent punishment. Individuals will be informed of the protections and benefits they will receive as members of the Marine Corps during foreign criminal proceedings. For example: counsel may be provided at Marine Corps expense; court costs (but not fines) paid; an interpreter made available; and, in most countries, the Marine will remain in United States, vice foreign, custody at least during the trial proceedings. Marines will also be informed that they will remain subject to the UCMJ and may be subject to processing for administrative discharge. In some situations, advice of Article 27b, UCMJ, counsel will be provided when exposure to military criminal charges is possible. Additionally, the Marine will be advised that an election not to extend the enlistment voluntarily shall result in the following:

(1) Foreign authorities will be advised of the impending EAS and the inability of the Marine Corps to guarantee the Marine's presence after discharge;

(2) Foreign authorities will be offered custody of the Marine immediately prior to EAS; and

(3) Assuming foreign authorities accept custody, the Marine will be discharged from the naval service as soon thereafter as practicable, thereby terminating any special considerations that the Marine would be entitled to as a member of the armed forces.

b. If the Marine elects to extend the enlistment voluntarily, such request will be honored, and an appropriate page 11 entry will be made in the Marine's service record book and acknowledged by the Marine's signature. (See MCO P1040.31_, Enlisted Career Planning and Retention Manual.)

c. Should the Marine elect not to extend voluntarily, foreign authorities will be notified of the inability of the Marine Corps to guarantee the presence of the member after discharge due to the Marine's impending EAS. The foreign authorities will then be afforded the opportunity to take custody of the Marine at a mutually agreed

time immediately prior to EAS. If the foreign authorities desire custody, the Marine will be transferred to the foreign authorities at the agreed time. After such transfer of custody, the Marine's commanding officer will, at EAS, discharge the Marine and so notify the Judge Advocate General of the Navy, the CMC (MMSR), and the U.S. Embassy or Consul.

d. Should the foreign authorities, upon being notified of the Marine's impending EAS and the inability of the Marine Corps to maintain custody after discharge, state that the Marine need not be present within the jurisdiction and is not required nor desired to be available for any further criminal proceedings, the Marine should be returned to CONUS for separation. In such cases, foreign authorities have in effect released the Marine Corps from any obligation to keep the Marine within the foreign jurisdiction or to make the Marine available for foreign criminal proceedings. This communication from appropriate foreign authorities should be in writing, if possible; if not, a memorandum for the record should be made to memorialize the agreement. In any event, all action taken must be in accordance with the terms of any applicable Status of Forces Agreement or other similar applicable agreement or treaty.

e. The foregoing policy does not apply to a Marine who is in the custody of/confined by foreign authorities prior to the approach of EAS. In that situation, the provisions of SECNAVINST 5820.4_ continue to apply and, except under extraordinary circumstances approved by the Secretary of the Navy, the Marine will not be discharged while in custody or confinement of the foreign authorities.

1006. CONSULAR PROTECTION OF FOREIGN NATIONALS SUBJECT TO THE UCMJ

1. When a Marine who is not a citizen of the United States, and who claims foreign citizenship, is apprehended by military authorities under circumstances likely to result in confinement, or is ordered into military confinement, or is referred to trial by court-martial, the officer exercising general court-martial jurisdiction (OEGCMJ) is required to notify the nearest consular office of the foreign country concerned. This requirement is subject, in certain cases, to the objection of the Marine, depending on the applicable treaty, if any. Amplifying information is contained in SECNAVINST 5820.6.

2. In the event of the aforementioned, a copy of the notification must be incorporated into the record of trial. The commander on whose rolls the Marine is carried is responsible for informing the OEGCMJ over a Marine who is a foreign national whenever circumstances arise indicating that consular notification may be required.

1007. CLEMENCY REVIEW

1. Individuals whose court-martial sentence includes confinement for 12 months or more, or an unsuspended punitive discharge, are eligible for clemency review by the Naval Clemency and Parole Board (NC&PB) in accordance with SECNAVINST 5815.3_.

2. The commander on whose rolls the person is carried or, in the case of a Marine serving sentence in a Marine Corps brig, the commanding officer thereof, shall:

a. Provide a person eligible for clemency review the opportunity and free choice to request or waive clemency review before each annual review by NC&PB. Individuals should be encouraged to consult with assigned defense counsel prior to making their initial review decision.

b. Ensure that members waiving clemency review understand clearly the consequences of their choice, as outlined on the waiver form, and that, unless subsequent review is scheduled or directed, their cases will not again be subject to review by the Naval Clemency and Parole Board.

3. The vehicle for clemency review is the court-martial progress report, which will include:

a. The basic report;

b. The request for clemency; and

c. Endorsements of officials in the chain of review.

4. Only the following forms will be used in connection with clemency review:

a. To prepare the court-martial progress report - DD Forms 1476, 1477, 1478, and 1479 for the basic report, and NAVSO 5815/2 for the Marine's clemency request.

b. To waive clemency review - NAVSO 5815/4.

5. The commander on whose rolls the Marine is carried or, in the case of an individual serving sentence in a Marine Corps brig, commanding officer thereof, shall submit the original and two copies of the court-martial progress report to the President, NC&PB on all members who do not waive clemency review. A copy of the report will be furnished to the OEGCMJ (Attn: SJA). The time of submission shall be in accordance with the schedule established in SECNAVINST 5815.3_. Progress reports are to be completed as follows:

a. All required DD forms comprising the basic report, plus the Marine's clemency request, shall be completed in their entirety.

b. Psychiatric evaluations shall be in narrative form and normally typewritten. A military psychiatrist, a clinical psychologist, or a medical officer must make the evaluation.

c. Detailed information required to be included in psychiatric evaluations is contained in SECNAVINST 5815.3_.

1008. AGREEMENT TO EXTEND ENLISTMENT FOR THE PURPOSE OF SERVING A PERIOD OF SUSPENSION

1. Even though a Marine does not have sufficient time remaining on an enlistment to serve the period of suspension specified by the Secretary of the Navy or NC&PB, the Marine may be restored to duty, provided the Marine consents in writing to an extension of enlistment for the required suspension period.

2. The agreement to be executed shall be as follows:

"With full knowledge that the unexecuted portion of my sentence may be suspended for the purpose of allowing me to serve on active duty during the period of suspension, I hereby agree to be retained on active duty for the period of suspension, such period not to exceed 1 year. I further understand that the suspension may be vacated in accordance with R.C.M. 1109, MCM, 1998, in which event the unexecuted portion of my sentence shall be executed."

If the Marine has lost time that must be made good, add the following:

"I further understand that, pursuant to 10 U.S.C. § 972 and implementing directives, I shall also be required to make up _____ days time lost from my enlistment unless I am sooner discharged."

3. The following shall be accomplished relative to this agreement:

a. The information contained in the agreement shall be carefully explained to the Marine.

b. The Marine will sign the original and duplicate original.

c. The original agreement shall be retained in the SRB. The duplicate original will be forwarded to the Secretary of the Navy (Naval Clemency and Parole Board) via the CMC (JAM), with the Request for Restoration/Clemency, NAVSO 5815/2. The Marine should be advised that execution of an agreement to remain on active duty for the suspension period is not a form of clemency action, and that only the Naval Clemency and Parole Board may restore the Marine to duty.

1009. CIVILIAN WITNESSES. Gathering evidence from civilian witnesses is sometimes impossible because military criminal investigative organizations, preliminary inquiry officers, UCMJ, Article 32 investigation officers, and trial counsel cannot compel the attendance

of civilian witnesses until court-martial charges are referred to trial. When evidence from a civilian witness is needed before referral of charges, an oral or written deposition under UCMJ, Article 49 and Rule for Court-Martial 702 should be considered. A deposition may be taken after charges have been preferred. A subpoena is available to compel the attendance of a civilian witness at a deposition.

1010. INSTRUCTION ON THE UCMJ

1. The UCMJ, Article 137, requires that Articles 2, 3, 7 through 15, 25, 27, 31, 38, 55, 77 through 134, and 137 through 139 of the UCMJ be explained to enlisted Marines at the time of (or within six days after):

a. The Marine's initial entrance on active duty; or

b. The Marine's initial entrance into a duty status with a Reserve component; and

c. After the Marine has completed 6 months of active duty or, in the case of a Marine of a Reserve component, after the Marine has completed recruit training; and

d. At the time the Marine reenlists.

2. Instructions for recording the foregoing explanation in the service records of Marines are contained in MCO P1070.12_ (IRAM).

1011. SIGNING OF DOCUMENTS AND CORRESPONDENCE RELATED TO MILITARY JUSTICE MATTERS. The authority to convene courts-martial may not be delegated. Only the commander or the successor to command, as defined by Article 1026, U.S. Navy Regulations, 1990, and Marine Corps Manual, paragraph 1007, may sign court-martial convening orders, the referral block for charge sheets, and certain other court-martial documents. Documents will not be signed "acting" or "by direction."

1012. SEXUAL ASSAULT INCIDENTS AND REPORTING REQUIREMENTS. See also Chapter 6.

1. Commanders shall report all actual, suspected, or alleged incidents of sexual assault to the Provost Marshal. The Provost Marshal will ensure necessary notifications are provided to the Naval Criminal Investigation Service. For the purposes of this reporting requirement, the term sexual assault is defined by MCO 1752.5_, Sexual Assault Prevention and Response, and includes rape, forcible sodomy, assault with the intent to commit rape or sodomy, indecent assault, and any attempt to commit such offenses.

2. Sexual assault incidents are reportable incidents. The commander of the alleged offender will submit an OPREP-3SIR in accordance with

MCO 5740.2_. In those cases where the alleged offender is unknown, the reporting commander will be that of the alleged victim. Staff Judge Advocates shall ensure that the SJA to CMC is an addressee on such reports.

CHAPTER 2

ORGANIZATION OF MARINE CORPS DEFENSE COUNSEL

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CHAPTER 2

ORGANIZATION OF MARINE CORPS DEFENSE COUNSEL

2000. OVERVIEW

1. Purpose. This chapter restates the organization of defense counsel in the Marine Corps and their duties; provides standards, policies, and procedures for the supervision of judge advocates performing defense functions; and explains the role of defense counsel for commanders.

2. Background. Exercising its constitutional responsibility to make rules for the government and regulation of the armed forces, Congress established a system of military law by enacting the UCMJ. In doing so, it recognized that fair and just administration of military justice is essential if the armed forces are to effectively carry out their national defense responsibilities. The UCMJ provides for the appointment of military defense counsel to represent servicemembers charged with violations of military law. By the Manual for Courts-Martial, 1998 (MCM, 1998), the President of the United States has prescribed procedures which govern the conduct of defense counsel in connection with trials by court-martial. The Manual of the Judge Advocate General of the Navy (JAGMAN), in pertinent part, implements the UCMJ and MCM, 1998, and prescribes standards relating to the professional and ethical responsibilities of defense counsel. So, also, military appellate courts, in interpreting provisions of the UCMJ and MCM, 1998, issue binding decisions with respect to defense counsel. Finally, departmental directives and service regulations delineate additional duties for defense counsel in connection with the representation of servicemembers who face adverse administrative action. This chapter refines the Marine Corps system for provision of defense counsel services, and does so in consonance with directives of the Congress, the President, the courts, and well-established policies of the naval service.

3. Policy. If Marines entertain doubts about the fairness of the military justice system or the way that it is administered, confidence in the Marine Corps could be undermined. A robust defense organization is one of the best ways to enhance the strength, efficiency, and fairness of military justice in reality and appearance. Thus, within the Marine Corps military justice system, it is essential that defense counsel are accorded adequate facilities, logistical and administrative support, and continuing professional legal training of the highest quality.

2001. DEFINITIONS

1. Chief Defense Counsel of the Marine Corps (CDC). A Marine Corps judge advocate in the grade of colonel, directly responsible to the Director, Judge Advocate Division (CMC (JA)), Headquarters, U.S. Marine Corps, for the general supervision of the performance and professional development of all Marine Corps judge advocates serving as defense counsel in Marine Corps commands; and who performs the duties described in paragraph 2002.1.

2. Regional Defense Counsel (RDC). A Marine Corps judge advocates in the grade of lieutenant colonel, directly responsible to the CDC for general supervision of the performance and professional development of all Marine Corps judge advocates serving as defense counsel in Marine Corps commands located in their respective regions; and who performs the duties described in paragraph 2002.2.

3. Senior Defense Counsel (SDC). An experienced Marine Corps defense counsel appointed by and responsible to the staff judge advocate, law center director, or officer in charge, legal services support section (OIC, LSSS), for general supervision of the performance and professional development of all Marine Corps judge advocates serving as defense counsel at a particular command or location; who also is directly responsible to the cognizant RDC with respect to the latter's supervisory functions; and who performs the duties described in paragraph 2002.3. Appointment of the SDC shall be made in consultation with the cognizant RDC.

4. Defense Counsel. A Marine Corps judge advocate certified under Article 27b, UCMJ, who performs defense functions as a primary duty, to include service as an individual military counsel (IMC) in accordance with JAGMAN, section 0131.

5. Defense Functions. Acting as defense counsel in connection with courts-martial, Article 32, UCMJ investigations, administrative separation proceedings, and any other matters in which defense counsel participation is required or authorized.

6. Cognizant Command Authority. The staff judge advocate, law center director, OIC, LSSS, or OIC, Legal Services Support Team, of the legal organization to which the defense counsel is assigned.

7. Regions. Three regions are established:

a. Eastern, encompassing the geographic area within the 1st, 4th, and 6th Marine Corps Districts.

b. Western, encompassing the geographic area within the 8th, 9th, and 12th Marine Corps Districts.

c. Western Pacific, encompassing Okinawa, Iwakuni and Hawaii. Marine Corps districts are defined in MCO P1100.71A, Military Personnel Procurement Manual, Vol. 1.

2002. DUTIES AND RESPONSIBILITIES

1. Chief Defense Counsel of the Marine Corps. The CDC exercises supervision, direction, and control over RDCs, and general professional supervision over SDCs and defense counsel within Marine Corps commands. The CDC is directly responsible to the Director, Judge Advocate Division, for assessing the quality of the performance of defense functions throughout the Marine Corps and making recommendations for improvement whenever appropriate. The CDC exercises general professional supervision through the RDCs. This supervision does not, however, include operational or administrative control of SDCs or defense counsel, which will continue to be exercised by cognizant command authority per established practices, policies, and procedures. Similarly, the CDC's supervision will not interfere with a RDC's, SDC's, or defense counsel's professional, legal, and ethical responsibilities to exercise independent judgment and action in the discharge of their duties to their clients. It does entail the performance of specific tasks in certain administrative and professional areas, including but not limited to the following:

a. Preparing and reviewing fitness reports per paragraph 2005;

b. Supervising the quality of practice, procedure and techniques in the performance of defense functions, to include recommendations for corrective action;

c. Inspecting the professional training and continuing legal education accorded defense counsel, and making recommendations for appropriate changes;

d. Inspecting the adequacy of legal facilities provided defense counsel, including private office spaces, office equipment, access to law libraries and reference materials, logistical, administrative and clerical support, and making recommendations for appropriate changes;

e. Monitoring the relative experience levels of judge advocates assigned as defense counsel and the requirements imposed on defense counsel to perform duties in addition to defense counsel functions; and

f. Reporting to the Director, Judge Advocate Division, at least quarterly, on the state of defense counsel services within the Marine Corps, to include the status of personnel, facilities, administrative and logistical support.

Regional Defense Counsel. RDCs are under the operational control of the CDC for all purposes, including assignment to duty as IMCs and the performance of other defense functions. The CDC will make RDCs available to take courts-martial and other appropriate cases so that RDCs maintain a caseload commensurate with their training and supervisory responsibilities. When made available to such cases,

RDC’s, like all defense counsel, are obliged to carry out their responsibilities in accordance with the Rules of Professional Conduct contained in JAGINST 5803.1. In discharging supervisory responsibilities in their respective regions, RDCs will be guided by the principles and objectives set forth in paragraph 2002.1. Additionally, they will perform specific tasks in certain administrative and professional areas including, but not limited to, the following:

a. Preparing and reviewing fitness reports per paragraph 2005;

b. Preparing memorandum endorsements on requests for augmentation or extended active duty per paragraph 2006;

c. Conducting frequent visits to locations at which judge advocates perform defense functions, to include courtroom observation and attendance at docket calls and calendaring sessions;

d. Monitoring defense counsel performance through personal observation, reading records of trial, and continuing liaison with convening authorities, commanders, military judges, staff judge advocates, law center directors, and OICs of LSSSs;

e. Being available to provide professional advice, guidance, and assistance to the SDCs and defense counsel;

f. Communicating with SDCs and defense counsel concerning matters within the purview of the RDC supervisory responsibilities;

g. Providing SDCs and defense counsel training in military law and procedures, trial tactics, professional responsibility, and other aspects of the defense function;

h. Inspecting the professional training and continuing legal education accorded defense counsel through command sources, and making recommendations for appropriate changes;

i. Inspecting the adequacy of legal facilities provided defense counsel, including private office spaces, office equipment, access to law libraries and reference materials, logistical, administrative and clerical support, and making recommendations for appropriate changes;

j. Monitoring the relative experience levels of judge advocates assigned defense counsel duties and the requirements imposed on defense counsel to perform duties in addition to defense counsel functions;

k. Reporting to the CDC, at least quarterly, on the state of defense counsel services within their respective regions, to include the status of personnel, facilities, administrative and logistical support; and,

l. Maintaining a caseload of defense cases commensurate with the training and supervision responsibilities over defense counsel in their area.

3. Senior Defense Counsel. SDCs perform defense counsel functions, including duties as IMC when so assigned by cognizant command authority; are responsible to the staff judge advocate, law center director or OIC, LSSS, for all operational and administrative matters within that official's purview; and provide assistance to the RDC with respect to the latter's supervisory functions. Other specific tasks include:

a. Preparing fitness reports per paragraph 2005;

b. Providing advice to defense counsel working under their supervision;

c. Acting as primary liaison between the defense counsel and the RDC;

d. Maintaining a caseload of defense cases commensurate with the training and supervision responsibilities over defense counsel under their cognizance; and,

e. Detailing defense counsel for all Marines or Sailors who have been in arrest or pretrial confinement for 10 days or more, regardless of whether charges have been preferred, provided that cognizant command authority has delegated detailing authority to the SDC.

4. Defense Counsel. Defense counsel perform defense functions, including duties as IMCs assigned by cognizant command authority; are responsible, via the SDC, to the staff judge advocate, law center director or OIC, LSSS, for all matters within that official's purview; and are authorized to communicate directly or via the SDC with the RDC with respect to the latter's supervisory functions. Once assigned to defense counsel duties, SDC and defense counsel, excluding IMCs, shall not be reassigned to other full-time duties without first consulting with the applicable RDC. Under normal circumstances, SDC and defense counsel should serve at least 12 months in their respective billets before reassignment, other than pursuant to PCS orders.

5. Cognizant Command Authority. Pursuant to JAGMAN, 0130b(1), the authority to detail defense counsel is vested in the defense counsel’s commanding officer and cognizant command authority. Detailing authority may be delegated to SDCs. Cognizant command authority will ensure that defense counsel are detailed for all Marines or Sailors who have been in arrest or pretrial confinement for 10 days, regardless of whether charges have been preferred. If detailing authority is delegated to the SDC, the delegation shall be in writing and shall specify the requirement to detail defense counsel to all

Marines or Sailors who are in pretrial confinement or arrest within 10 days, regardless of whether charges have been preferred.

2003. SUPPORT

1. Reserve Augmentation Support. In the event of mobilization, the CDC and the RDCs will require immediate augmentation to provide necessary defense services and supervision. The table of organization of the Judge Advocate Division, HQMC, provides for such augmentation upon mobilization. During peacetime, Reserve judge advocates will be assigned to the augmentation billets under the cognizance of the CDC and the RDC in order to provide maximum readiness for mobilization. Reserve judge advocates serving in these augmentation assignments shall perform both inactive training duty and active duty for training as assigned by the CDC and the RDC, and shall be evaluated as Reservists per MCO 1001.45G.

2. Administrative and Logistical Support

a. Cognizant command and convening authorities will continue to provide administrative and logistical support to defense counsel and SDCs per established practices, policies, and procedures.

b. Administrative and logistical support for the CDC and RDCs, including their support personnel, will be provided by the respective host commands to which they are administratively attached. This support will include, but is not limited to:

(1) Permanent quarters to the same degree as are provided regularly assigned personnel of the same grade;

(2) Maintenance of financial records, preparation of pay vouchers, and payment of personnel;

(3) Maintenance of service record books, officer qualification records, leave records, and similar personnel requirements; and

(4) Private office space, office furniture, equipment, supplies, class-A telephone service, and access to legal library and reference materials.

c. The CDC and support personnel are administratively attached to Company B, Headquarters Battalion, Headquarters, U.S. Marine Corps, with Monitored Command Code TEM.

d. The RDC, Eastern Region, and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Lejeune, with Monitored Command Code TEH.

e. The RDC, Western Region, and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Pendleton, with Monitored Command Code TEJ.

f. The RDC, Western Pacific Region, and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Smedley D. Butler, with Monitored Command Code TEG.

2004. BUDGETING AND FUNDING GUIDANCE

1. Cognizant command and convening authorities will continue to provide funding for defense counsel and SDCs per established practices, policies, and procedures.

2. Funding for administrative and logistical support of RDCs and their support personnel, including travel, per diem, training and continuing legal education in connection with duties described in paragraph 2002.2 will be provided by the commands to which the RDCs are administratively attached.

3. Funding for administrative and logistical support, travel, per diem, training, and continuing legal education of the CDC and support personnel will be provided by HQMC.

4. Funding for special requirements, such as defense counsel, SDC, RDC, Reserve augmentee, and instructor participation in professional training seminars and continuing legal education directed by the CDC, will be provided by HQMC.

5. Annual budget requirements to support the activities described above will be submitted per MCO P7100.11, Budget Manual for HQMC and Special Activities. Amplifying guidance will be provided in Field Budget Guidance Bulletins (7100 series).

2005. FITNESS REPORTS

1. Fitness reports on judge advocates assigned duties as defense counsel, SDCs, RDCs, and CDC will be completed per MCO P1610.7E (PES). The only exception to these policies is the approved reporting chain outlined below.

a. Reporting and Reviewing Responsibilities for Regular Reports

(1) Director, Judge Advocate Division

(a) The Director, Judge Advocate Division, is the reporting senior and the Assistant Commandant of the Marine Corps is the reviewing officer for the CDC.

(b) The Director, Judge Advocate Division, is the reviewing officer of judge advocates whose reporting senior is the CDC.

(2) Chief Defense Counsel

(a) The CDC is the reporting senior for RDCs.

(b) The CDC is the reviewing officer of judge advocates whose reporting senior is an RDC.

(3) Regional Defense Counsel

(a) The RDC is the reporting senior for all SDCs in the region and the reviewing officer for defense counsel whose reporting senior is an SDC.

(b) The RDC is the reporting senior for defense counsel not reported on by an SDC.

(c) When authorized by the CDC, the RDC is the reporting senior for SDCs of the same grade.

(4) Senior Defense Counsel

(a) The SDC is the reporting senior for defense counsel who are junior in grade and under the SDC's immediate supervision.

(b) When authorized by the cognizant RDC, the SDC is the reporting senior for defense counsel of the same grade.

b. Simultaneous Reports

(1) Recognizing that the demand for defense services will vary and that defense counsel may legitimately be required to perform duties in addition to defense functions, particularly in commands with low court-martial caseloads, simultaneous fitness reports prepared and reviewed by appropriate command authorities are authorized.

(2) Simultaneous fitness reports prepared and reviewed by command authorities will be limited to specific, significant duties other than those related to defense functions.

(3) An IMC whose regular reporting senior is neither an SDC nor an RDC may receive a simultaneous fitness report from the RDC or SDC having cognizance over the site of the trial or other proceeding in which such duties are performed. Minimum periods of observation set forth in MCO P1610.7E (PES) must be met.

c. Deployment. Fitness report responsibility for defense counsel deployed with a MAGTF normally remains with the RDC or SDC having cognizance over the area from which deployed.

d. Officer and Enlisted Support Personnel. Fitness reports on officer and enlisted personnel assigned duties with the CDC and RDC will be completed per MCO P1610.7E (PES).

2006. REQUESTS FOR AUGMENTATION AND EXTENDED ACTIVE DUTY

1. In addition to the guidance contained in MCO 1001.45G, the following procedures will govern processing of requests for augmentation or extended active duty submitted by judge advocates who have performed duty as a defense counsel.

2. Such requests submitted by judge advocates who, at the time of the request, are performing defense functions as a primary duty or who, during the preceding 12 months, performed defense functions as a primary duty, will be referred to the cognizant RDC for memorandum endorsement.

3. The staff judge advocate, law center director, OIC, LSSS, or other command authority will ensure that this endorsement is obtained prior to forwarding the request to the CMC (MMOA).

2007. APPLICABILITY. This chapter has no applicability to Marine Corps judge advocates serving as defense counsel in commands external to the Marine Corps.

POINT PAPER FOR COMMANDERS

Subj: THE ROLE OF DEFENSE COUNSEL

1. Authority. All Marine Corps judge advocates practice under the supervision of the Navy Judge Advocate General and must comply with JAGINST 5803.1A. This instruction establishes the Rules of Professional Conduct for Marine Corps and Navy judge advocates. The rules are based on the American Bar Association Rules of Professional Responsibility with some modifications to conform to military practice. They are also similar to rules issued by State bar associations.

2. Duties of Defense Counsel

a. Unfettered Loyalty. Pursuant to the JAGINST, a defense counsel must exhibit unfettered loyalty and professional independence in representing the client, and is ultimately responsible for acting in the best interests of the individual servicemember. Accordingly, when assigned to represent a particular Marine or Sailor, neither a judge advocate's personal interests, the interests of the Marine Corps, or some other third party, may affect the loyalty owed the individual servicemember. In a nutshell, a defense counsel's duty to the client supersedes the defense counsel's duty to the Marine Corps.

b. Truthfulness to Others. When dealing with others, a judge advocate must be truthful. The obligation to be truthful, however, should not be viewed as an obligation to be forthcoming with any or all information that might help a convening authority make an informed decision. Despite their duty to tell the truth, defense counsel have no affirmative duty to inform of relevant facts. For example, a defense counsel discussing a proposed pretrial agreement with a convening authority has no obligation to divulge relevant information that would dissuade the convening authority from entering such an agreement.

c. Confidentiality. A defense counsel shall not reveal information relating to a client's representation unless the client authorizes the disclosure. This rule builds trust and facilitates candid communication by the client. The ability of a Marine to speak freely to his Marine lawyer ensures effective representation.

3. Chain of Command and Autonomy. The OIC of the LSSS or the SJA at the law center have administrative control over defense counsel. They are accountable to the SJA/OIC for administrative purposes only, e.g., duty hours, formations, PFT, etc. In matters related to their duties as defense counsel, they receive supervision/guidance and fitness reports from the Senior or Regional Defense Counsel. Unlike a battalion commander who can order the company commander to use a

Figure 2-1.--Point Paper for Commanders - The Role of Defense Counsel.

particular scheme of maneuver, neither the SDC nor RDC can order a defense counsel to take a particular action during the representation of a client.

4. Rules of Thumb for Commanders

a. Always bear in mind that the primary interest of a defense counsel is the client.

b. Although you may agree to defense requests and enter into pretrial agreements without first conferring with your SJA or trial counsel, consulting your SJA or trial counsel prior to granting a defense request or entering into a pretrial agreement is a more prudent course.

c. Before meeting with defense counsel, you should advise the trial counsel/investigator of the meeting and invite them to attend.

d. The military justice system is only as good as its defense counsel.

Figure 2-1.--Point Paper for Commanders - The Role of Defense Counsel--continued.

CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND PREPARATION OF THE UNIT PUNISHMENT BOOK

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CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND PREPARATION OF THE UNIT PUNISHMENT BOOK

3000. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT

1. Commanding Officers. All commanding officers may impose punishment under Article 15, UCMJ upon military personnel of their command. For purposes of this paragraph, "commanding officer" is defined as one who is properly appointed to command an organization, or who, under applicable provisions of law, regulations, or orders, succeeds to such command due to transfer, incapacity, death, or absence of the previous commander. "Commanding officer" includes a commissioned warrant officer exercising command. Marine Corps commanding officers are titled as Commandant, Commander, Commanding General, Commanding Officer, Director, and Inspector-Instructor. Other titles used to designate Marine Corps commanders shall be made only with the specific approval of the Commandant of the Marine Corps. With the exception of delegations of authority to impose NJP from a general officer in command to a principal assistant, which require the express prior approval of the Commandant of the Marine Corps (see section 0106c, JAGMAN), the authority to impose NJP cannot be delegated unless by specific authorization of the Secretary of the Navy. "Acting" commanders do not have authority to impose NJP solely by virtue of their acting status.

2. Officers in Charge. Officers in charge of units designated by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached, or orders of the senior officer present, are empowered to impose nonjudicial punishment upon enlisted personnel assigned to their unit. An officer in charge, regardless of grade, in addition to imposing an admonition or reprimand, is limited to those punishments authorized by the UCMJ for company grade officers.

3001. JURISDICTION OVER ACCUSED

1. At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary duties.

2. For the imposition of nonjudicial punishment, a person who has been designated a party before a fact-finding body convened under JAGMAN, Chapter II, remains thereafter "of the command" of the unit or organization to which assigned or attached at the time of such designation. This is for the limited purpose, however, of imposing a letter of admonition or reprimand, and imposition of NJP is valid even though, for other purposes, that person may have been assigned or attached to another command before such letter was delivered. This status terminates automatically when all action contemplated by Article 15, UCMJ, including action on an appeal, has been completed. (See section 0107a(2), JAGMAN.)

3. Except as provided in paragraph 3001.2, if, at the time nonjudicial punishment is to be imposed, the accused is no longer assigned or attached to the same unit or command, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual accused. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction.

4. Jurisdiction over Reservists

a. Members of the Reserve component on active duty or inactive duty training are subject to the UCMJ. Such members are not, by virtue of termination of a period of active duty or inactive duty training, relieved from amenability to jurisdiction of the UCMJ for offenses committed during such periods of active duty or inactive duty training and may be ordered to active duty for the sole purpose of disciplinary proceedings. (See sections 0107b, 0123d, 0123e, and 0123f, JAGMAN.)

b. As a matter of policy, any physical restraint pending nonjudicial punishment or imposed as NJP shall not extend beyond the normal time of termination of a drill or training period.

5. Effect of Expiration of Active Service (EAS) of Marines Pending or Undergoing Nonjudicial Punishment. A Marine may not be involuntarily retained in the service beyond normal EAS for the purpose of imposing NJP or to serve punishment previously imposed at NJP, or to be a witness at NJP.

3002. ADVICE TO ACCUSED BEFORE IMPOSITION OF NJP. An accused Marine may have NJP imposed without first being accorded the opportunity to consult with a judge advocate, but the results of any such NJP are not admissible as a matter in aggravation at any subsequent court-martial proceeding. As a matter of policy, however, an opportunity to consult with a judge advocate should be accorded to those who request such, if at all practicable (telephone may be used). This will ensure the Marine has been afforded all legal rights prior to the imposition of

NJP as provided by section 0109, JAGMAN. (See also Appendices A-l-b, A-l-c, and A-l-d, JAGMAN.)

3003. QUANTUM OF PUNISHMENTS-COMBINATION. Paragraph 5d of Part V, MCM, 1998, contains instructions concerning combination of nonjudicial punishments.

3004. FORFEITURES IMPOSED AS NONJUDICIAL PUNISHMENT

1. Forfeitures imposed as nonjudicial punishment must be expressed in whole dollar amounts only--not in dollars and cents (e.g., $100.25), not in "days pay" (e.g. 10 days pay), and not in fractions (e.g., 1/2 of a month's pay). See paragraph 5 of Part V, MCM, 1998.

2. The maximum permissible forfeiture is determined by rounding down to whole dollar amounts.

3. The maximum permissible forfeiture which can be imposed by a company grade officer or officer in charge at NJP is determined by dividing a month's base pay by 30, multiplying the result by seven, and rounding down to a whole dollar amount.

4. If a reduction is also imposed, whether or not such reduction is suspended, the maximum permissible forfeitures must be computed on the pay of the grade to which reduced. See paragraph 5 of Part V, MCM, 1998.

3005. SUSPENSION, REMISSION, MITIGATION, SETTING ASIDE

1. Article 15(d), UCMJ and paragraph 6 of Part V, MCM, 1998, provide that an officer who imposes nonjudicial punishment may suspend, remit or mitigate any part or amount of the unexecuted portion of that punishment; may set aside in whole or in part that punishment, whether executed or unexecuted; and may restore all rights, privileges and property affected by that punishment.

2. In addition to the officer who imposed the punishment, the following officers may also take remedial action: a successor in command to the imposing officer; the commander of any command to which the Marine is subsequently transferred; and, any other officer authorized to act on the punishment imposed.

3. There are certain restrictions on remedial action concerning punishment:

a. The power to set aside punishments and to restore some or all rights, privileges and property affected by the executed portions of a punishment should ordinarily be exercised only when the authority

considering the case believes that, under all circumstances of the case, the punishment has resulted in a clear injustice.

b. The power to set aside an executed punishment, or to mitigate an executed or unexecuted reduction in grade to a forfeiture of pay, should be exercised within 4 months after the date of execution. See paragraph 6(b) of Part V, MCM, 1998.

c. Suspension of an executed punishment of reduction or forfeiture of pay may be accomplished only within 4 months of the date the punishment is executed.

3006. UNIT PUNISHMENT BOOK (UPB)

1. A Unit Punishment Book (UPB) form (NAVMC 10132) will be used to record the imposition of NJP for enlisted personnel. When reporting nonjudicial punishment of officers, comply with chapter 4 of this Manual.

2. When an officer exercising Article 15, UCMJ authority receives information that an offense punishable under the UCMJ has been committed by an enlisted person under that officer's jurisdiction, and that officer further determines that the offense should either be disposed of at nonjudicial punishment or be referred to higher authority, a UPB form will be prepared.

3. The UPB form will be prepared in duplicate and may be typewritten or handwritten (legibly) in black or blue-black ink. The completed duplicate UPB form will be filed, after completion of all items, in the originating unit's files (Standard Subject Identification Code 5812). The duplicate UPB form does not require original signatures or initials. Authorized abbreviations are encouraged. (See MCO P1070.12J, IRAM.) When there is insufficient space for an item, the reverse side of the UPB form or a sheet of bond paper may be used. Additional sheets will be securely stapled to the UPB form.

4. The use of correction tape and/or fluid is not authorized. Changes and corrections will be made by drawing a thin-inked line (using black or blue-black ink) through the character(s)/numeral(s)/ word(s) to be changed or corrected. The new information will be entered directly above or below the original information, or explained in item 18, as applicable.

> CH 2 5. Detailed Preparation Instructions

a. Item 1. Do not use charge/specification as in courts-martial. If there are multiple infractions of an article of the UCMJ, repeat the article as indicated below. Enter the article(s) of the UCMJ violated and a summary of each offense, to include date, time, and place of the alleged offense. Examples:

Art. 90. Struck Capt Smith with fists at HqCo, HqBn 3d MarDiv at 0930, 10 Nov 98.

Art. 90. At Co A, 1st Bn, 7th Mar (deployed) on 11 Mar 98, willfully disobeyed Capt Green's order to get a haircut.

Art. 86. UA fr HqCo, HqBn, 3d MarDiv dur the prd 0800, 11 Nov 98 through 2359, 15 Nov 98.

Art. 86. At HqCo, HqBn, 3d MarDiv, failed to go at the time prescribed to morning formation at 0800 on 11 Nov 98.

b. Item 2. After advising the Marine in accordance with Article 31, UCMJ and section 0104, JAGMAN, require the Marine to indicate intentions by striking out inapplicable portions, unless the Marine is attached to or embarked aboard a Naval vessel. In such cases, strike out with a single black or blue-black ink line all sentences after the first sentence. See section 0109, JAGMAN. Thereafter, require the Marine to date and sign the item. When a Marine refuses to indicate an intention and/or refuses to sign, process charges as a refusal to accept NJP and forward the UPB to the officer exercising court-martial jurisdiction for disposition. Note in item 2, "See item 16." Note in item 16, "Marine refuses to indicate intentions or to sign item 2. Case forwarded recommending (special court-martial), (summary court-martial), etc."

c. Item 3. Upon ensuring that the individual has been informed of the rights enumerated in Item 2, the immediate commanding officer will date and sign item 3. This action must be accomplished prior to imposition of NJP and this item must, therefore, be dated on or before the date NJP is imposed.

d. Item 4. After advising the accused of their opportunity to consult with counsel prior to electing to accept NJP, the violation of the article(s) of the UCMJ, and whether they accept NJP, the accused will date and sign item 4.

e. Item 5. Record current/previous UA's in excess of 24 hours and current/previous desertions.

f. Item 6. Enter punishment imposed and date of imposition. The entry "no punishment" is invalid. Unless a punishment listed in Article 15, UCMJ, is levied at the proceedings, NJP has not been imposed and no record will be maintained in the UPB binder. Sample forms of authorized punishments follow. Certain phrases in these examples are underscored merely to highlight areas where deviation from the prescribed wording, frequently has resulted in ambiguity. Other guidance is provided in parentheses. UPB form entries need not contain underlines or references.

Restr to the limits of HQSVCCo, 1st Bn, 3d Mar For 14 das, w/o susp fr du. 2 Jun 98. (See par 5c(2) of part V, MCM, 1998.)

Forf of $100 pay per month for 2 months. Total for $200. 2 Jun 98 (Always state forfeitures in whole dollar amounts.)

Corr cust for 7 das w/susp fr du. 2 Jun 98.

Corr cust for 6 das w/o susp fr du. 2 Jun 98.

Restr to the limits of place of mess, bil, du and worship and most dir route to and fr w/o susp fr du for 14 das and extra du for 14 das, to run concurrently. 2 Jun 98.

To be red to LCpl, E-3, and to be orally reprimanded. 2 Jun 98.

g. Item 7. Enter the date and the specific terms of the suspension. If no portions of the punishment are suspended, enter the word "NONE." When suspending all or portions of the punishment, the specific punishment, the length of the suspension, and the terms for automatic remission will be reflected. Example.

2 Jun 98. Red to LCpl, E-3, susp for 3 mos, at which time, unless sooner vacated, the red will be remitted w/o further action.

h. Item 8. Enter name, grade, and title of the officer who took the action listed in item 6.

i. Item 9. When the officer imposing punishment determines that the offenses are properly punishable under Article 15, UCMJ, the officer so determining will sign this item.

j. Item 10. Enter the date of notification to the Marine. This will normally be the same date as item 6 except where a formal investigation is used as a basis for the NJP or notification is done by mail.

k. Item 11. When NJP has been imposed, notify the Marine of the right to appeal. (See paragraph 7 of part V, MCM, 1998, and section 0110E, JAGMAN.) The officer imposing NJP shall date and sign the item. This will normally be the same date as item 6 and will, in no case, be prior to the date in item 6

l. Item 12. The Marine upon whom NJP is imposed shall date and sign this item indicating an understanding of the right to appeal the NJP imposed. When a Marine refuses to indicate an understanding of the right to appeal and/or refuses to sign item 12, note in item 12, "See item 16" and place the following entry in item 16: "Marine refuses to indicate intentions or sign item 12."

m. Item 13. Enter date of the appeal of the NJP. If not appealed, enter the words "Not Appealed."

n. Item 14. If an appeal is made, enter the final action and date thereof. Examples:

Appeal denied - 25 Jun 98.

Appeal granted, punishment set aside - 25 Jun 98.

Red set aside, no further relief granted - 25 Jun 98.

This item will be signed by the officer action on the appeal, or it may be signed "By direction" of the officer acting on the appeal.

o. Item 15. Enter the date the Marine was notified of the decision on the appeal. If the Marine has been transferred or discharged, enter the date of the endorsement forwarding the decision to the Marine's new command or to the Marine's permanent mailing address.

p. Item 16

(1) Entries are required in this item under the following conditions:

(a) If the Marine refuses to sign either item 2 or item 12, enter the following remark: "Marine refuses to indicate intentions or to sign item 2 and/or item 12" as applicable.

(b) When the offenses are forwarded to higher authority for disposition, a general or specific recommendation as to disposition may be entered. Examples:

General recommendation - "Fwd to BnCO recom NJP."

Specific recommendation - "Fwd to BnCO recom red."

(c) Enter any subsequent vacation of any suspended punishment included in item 7 and the date of vacation. Examples:

Forf or $250 per mo for 1 mo imposed and susp on 10 Dec 98 vacated - 26 Dec 98.

Red to PFC, E-2, imposed on 10 Dec 98 and susp on 15 Dec 98 vacated - 26 Dec 98.

(d) A Marine who has appealed may be required to undergo any punishment imposed while the appeal is pending, except that if action is not taken on the appeal within 5 days after the appeal was

submitted, and if the Marine so requests, any unexecuted punishment involving restraint or extra duty shall be stayed until action on the appeal is taken. (See paragraph 7 of part V, MCM, 1998.) An entry reflecting the stay of punishment will be made. Example:

7 Dec 98: Appeal submitted. Punishment of (here insert punishment) stayed.

(e) When an executed or unexecuted punishment is set aside. This entry will be place on the old UPB and the new UPB. If the old UPB is not held at the command, then enter on the new UPB only. Example:

7 Dec 98: Red to Cpl, E-4, is set aside. All rights, privileges and property affected will be restored.

(2) In addition to the aforementioned required entries, this item may be used to record other appropriate remarks or information.

q. Item 17. Upon completion of the required administrative action, the officer responsible for the action will initial this item. This item must be initialed by the commanding officer, officer in charge, or by an officer designated to sign "By direction" of the commander. Ensure completion of all SRB and unit diary entries.

r. Item 18. Enter the complete identification of the Marine's unit; e.g., company/battery/squadron/group/battalion.

s. Item 19. Enter last name, first name, and middle initial of the Marine.

t. Item 20. Enter grade and pay grade; e.g., LCpl, E-3.

u. Item 21. Enter social security number; e.g., 123 45 6789.

6. The officer imposing NJP will prepare, or cause to be prepared, a summary transcript of the proceedings. This may be accomplished by using the form prescribed in Appendix A-1-e, JAGMAN, or a locally prepared form. If local forms are used, sufficient information will be recorded to provide a clear and accurate picture of what transpired at the proceedings. This summary will be appended to the UPB form.

7. When an appeal from NJP is forwarded to higher authority for decision, comply with JAGMAN sections 0116 and 0117 and, additionally, forward the SRB (if available), the original UPB form, the summarization of proceedings, and all allied papers. After action on the appeal, the original of the appeal and all allied papers will be returned to the officer originating the UPB. Allied papers may include, but are not limited to, statements, investigation reports, documents, records, or photographs. A copy of the appeal will be provided to the Marine concerned. Item 17 will be completed and the original appeal with all enclosures and endorsements will be attached to the UPB form. Any allied papers will be filed in the command correspondence files in accordance with current directives. Factual disputes should be addressed by endorsers and resolved by the appeal authority.

8. NJP proceedings are considered complete and final when the appeal period has expired, or at the time the Marine is notified of the decision on an appeal. Once final, an appeal which has been granted may not be reconsidered and denied.

9. For each case involving an unsuspended reduction, copies of the UPB will be forwarded to CMC (MMSB) and delivered to the Marine once proceedings are complete and final.

10. A Unit Punishment Book binder shall be maintained for each organization where the commanding officer or officer in charge imposes NJP under Article 15, UCMJ. Those organizations using consolidated administration (e.g., a battalion) may maintain a single unit punishment book binder. Each Article 15, UCMJ, jurisdiction should be maintained separately by means of dividers (e.g., battalion, Co A, Co B).

a. The UPB binder will consist of UPB forms including attached pages, appeals, and summary transcripts of the impartial hearings, filed alphabetically in a loose leaf binder.

b. A new Unit Punishment Book binder shall be opened at the beginning of each calendar year.

c. When no punishment is imposed, or all offenses are referred to trial by court-martial or resolved by administrative corrective action other than NJP, the UPB form will not be maintained in the UPB binder.

d. Duplicate UPB forms will be prepared and maintained per paragraph 3006.3. However, *copies* of UPB forms forwarded to a higher level in the chain of command for disposition will not be maintained in the UPB binder.

e. The old UPB binder will be retained in the organization for 2 full calendar years as required by disposal instructions. (See SECNAVINST 5212.5D.)

> Ch 2 11. Disposition Instructions.

1. Disposition is as follows:

a. File the original in the SRB

b. Copy to official mioitary personnel file (OMPF)

c. Copy to unit files

d. Copy to member

3007. VACATION OF SUSPENSION. A suspended NJP may be vacated by any commander authorized to impose upon the accused punishment of the kind and amount to be vacated. Vacation of suspension may only be based on an offense under the UCMJ committed during the period of suspension. Before a suspension may be vacated, the accused ordinarily shall be notified and given an opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment suspended is of the kind set forth in Article 15(e)(1)-(6), UCMJ, the accused should, unless impracticable, be given an opportunity to appear before the commander contemplating the vacation to present any matters in defense, extenuation or mitigation of the offense on which the vacation action is based. Vacation of suspension of NJP is not itself NJP, and additional action to impose NJP for the offense(s) upon which

the vacation action is based is authorized. If only suspended punishment is vacated, an accused has no right of appeal. If additional punishment is imposed, the right to appeal applies. Commanders will prepare, or cause to be prepared, a summary transcript of vacation proceedings involving punishment of the kind set forth above. The summary transcript will include the following information:

a. A statement that the accused was informed of the vacation hearing and (was/was not) permitted to appear before the commander;

b. A description of the suspected offense warranting the vacation of suspended punishment; and

c. A statement that punishment for the additional offense (is/is not) contemplated.

3008. JUDGE ADVOCATE REVIEW. Before acting on an appeal of certain NJP punishments, the appeal authority must refer the case to a judge advocate for consideration and advice. See Article 15(e), UCMJ. This referral should involve full documentary review.

CHAPTER 4

OFFICER MISCONDUCT

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CHAPTER 4

OFFICER MISCONDUCT

4000. CHARGE TO OUR LEADERS

1. Marine Corps officers are a breed apart, entrusted with the leadership of the finest fighting organization in the world. When officers violate the special trust and confidence we have placed in them, the Marines of our Corps have the right to expect that corrective action will be initiated immediately, pursued vigorously, and resolved swiftly. When this does not happen, there is a justifiable perception that inequity exists, i.e., that there is inconsistency between the treatment of officer and enlisted misconduct.

2. Although SECNAVINST 1920.6A establishes time processing goals for officer administrative separation cases, there is no speedy trial rule like there is for courts-martial. Commanders, staff judge advocates, and legal service providers must, therefore, generate an internal sense of urgency in officer misconduct cases. There is no substitute for command attention in officer cases.

3. With the assistance of their staff judge advocates and officers in charge of legal service support sections/teams, all officers exercising general court-martial jurisdiction (OEGCMJ) will:

a. Establish a case tracking system for all reported officer misconduct and personally review its contents at least monthly;

b. Establish internal time processing goals for processing officer misconduct cases;

c. Regularly meet with the staff judge advocate to discuss all pending officer misconduct cases;

d. Meet personally with the Resident Agent in Charge, Naval Criminal Investigative Service, and with the local Officer in Charge, Criminal Investigation Division at least annually to discuss areas of mutual interest in officer case processing;

e. Ensure that expedited mail or courier service is used to transmit officer misconduct cases during all phases of processing and to each level of command. For commands geographically co-located, couriers (not guard mail) will be used. For commands geographically separated, Express Mail or comparable overnight mail service will be used.

4001. DISPOSITION OF CASES

1. The Commandant of the Marine Corps expects all matters involving officer discipline to be handled promptly. By the same token, it must be absolutely clear that commanders are expected to dispose of cases consistently, equitably, and in the interest of good order and discipline, considering those factors listed in the discussion at R.C.M. 306(b), Manual for Courts-Martial (MCM, 1998). Within the boundaries established by the Manual for Courts-Martial, SECNAVINST 1920.6A and related regulations, commanders retain unfettered authority to determine the most appropriate forum for resolution of a particular case. What is desired is not a "rush to judgment," but rather all deliberate speed in handling officer discipline cases.

2. Officer cases should not be postponed because of operations, exercises, or training commitments. We are a naval expeditionary force capable of administering discipline at any time around the world.

3. Drunk Driving or "DUI" Offenses. Certain types of cases arising from misconduct in the civilian community have historically taken inordinate amounts of time to resolve. In particular, drunk driving or "DUI" cases often turn into "trials by continuance." In such cases, commanders should consider the option of immediate nonjudicial punishment proceedings. This technique can speed the ultimate resolution of a drunk driving offense for Marine Corps purposes, as well as having a salutary effect on the disposition of the civilian court case by removing the very reason for postponement. NJP may be imposed at any time before a civilian trial, but only after receiving the permission of the OEGCMJ after a civilian trial. See JAGMAN, section 0124. Commanders who desire to embark on a program of immediate NJP proceedings for all off-base, officer drunk driving cases should make liaison with local law enforcement authorities.

4002. REPORT OF OFFICER MISCONDUCT

1. General. Upon receipt of information which indicates an officer may have committed an act proscribed by a military or civilian criminal statute, a report thereof will be made to CMC (JAM) in the following instances:

a. The officer is in the grade of colonel or above;

b. The officer is a commander with special court-martial convening authority;

c. The incident or allegation may generate media interest; or

d. The incident or allegation is the subject of NCIS, CID, or a command investigation or a preliminary inquiry under R.C.M. 303, MCM, 1998; or

e. The allegation(s) is supported by credible evidence and:

(1) The suspected criminal behavior is of such apparent seriousness that nonjudicial punishment, court-martial, civilian prosecution, or a recommendation to CMC (JAM) for administrative discharge proceedings may result; or

(2) Other circumstances exist that warrant the incident being brought to the attention of CMC.

f. Report all drunk driving or "DUI/DWI" cases that are supported by credible evidence.

g. Do not report DoD, DON or HQMC Inspector General investigations until they are completed <u>and</u> one of the previous reporting criteria is met.

h. When doubt exists as to whether a report is required, contact the CMC (JAM) for guidance.

2. The report will be made to CMC (JAM), Report Symbol MC-1621-04, by electronic mail, facsimile (DSN 225-8350; commercial 703-695-8350), or telephone (DSN 224-4250/1740; commercial 703-614-4250/1740). If made telephonically, it must be followed up with either electronic mail or facsimile within 1 working day. The report will be made by:

a. The staff judge advocate, senior judge advocate assigned, or other designated representative of an OEGCMJ; or

b. The commanding officer or officer-in-charge where no judge advocate is assigned to the organization or when the officer is not under the command of a Marine OEGCMJ.

3. The report shall include the following information:

a. Name

b. Grade/Date of grade

c. Social Security Number/Military Occupational Specialty

d. Component

e. Unit (including major command)

f. Marital status

g. Whether or not selected for promotion

h. Synopsis of the allegation(s)

4. The reported information will remain in the Commandant's Officer Discipline Notebook and will only be provided to those with a need to know.

a Such reports will not be included in the officer's official military personnel file (OMPF).

b. Upon receipt of the required notification, the Commandant has directed that the Director, Personnel Management Division hold in abeyance all personnel actions (such as promotion, retirement, separation, or transfer) relating to reported officers. These personnel "stop" orders carry with them no punitive aspect, but rather are implemented to maintain the status quo until the matters are resolved by the cognizant commanders and/or civilian authorities.

c. In unusual circumstances, commanders may request, in writing and with appropriate justification, execution of personnel actions prior to resolution of the allegation(s). Such requests shall be forwarded via the chain of command to CMC (JAM) for action.

d. Delays of promotion will be handled in accordance with applicable directives, and are not automatic. Commanders should note that immediate determinations concerning pending promotion and the desirability of delay are imperative, in order to avoid promotion while pending possible criminal charges. The promotion of an officer may not be delayed unless the officer has been given written notice of the grounds for the delay (except when it is impractical to give such written notice) before the effective date of the promotion. An officer whose promotion has been delayed shall be given the opportunity to comment in response to the action. (See SECINST 1120.11A, SECNAVINST 1412.6K, SECNAVINST 1412.9A, and SECNAVINST 1420.1A)

5. Monthly Report. A monthly status report on officer misconduct cases will be provided by each OEGCMJ or CO/OIC of a Marine unit and shall include a chronology of all significant events that have occurred in the case in the period since the last report. Where no significant actions have occurred, an explanation is required. The report shall be provided to CMC (JAM), Report Symbol MC-1621-05, at or before 1200 on the 20th of each month by either electronic mail or facsimile. An example of a monthly report is included as figure 4-1. An information copy of this report should concurrently be provided to the cognizant COMMARFOR. A negative report is not required from commands that have no active cases.

6. Officers of Other Services. A report shall be made per this paragraph on all non-Marine officers assigned or attached to Marine Corps commands. In the case of officers of the Navy, specified reporting as required by the Chief of Naval Personnel must also be complied with. Information on these requirements is available from CMC (JAM).

4003. NONJUDICIAL PUNISHMENT (NJP)

1. The Unit Punishment Book (UPB) will not be used when NJP is contemplated in officer cases. In lieu thereof, the officer should be advised of those matters contained in figure 4-2 or 4-3, as appropriate

2. The procedure for imposing NJP upon an officer is contained in section 0110, JAGMAN and paragraph 4, Part V, MCM, 1998.

a. When NJP is contemplated on the basis of a formal fact-finding body under JAGINST 5830.1, and the officer was accorded the rights of a party with respect to the act or omission charged, the officer should be advised of those matters set forth in figure 4-2. NJP may then be imposed without further proceeding.

b. When NJP is contemplated on the basis of information not the subject of a formal fact-finding body and the officer concerned was not accorded the rights of a party with respect to the act or omission charged, the officer must be advised of those matters set forth in figure 4-3. An Article 15, UCMJ, hearing must then be held in accordance with the procedures set forth in section 0110, JAGMAN and paragraph 4, Part V, MCM, 1998.

3. If NJP is imposed, the officer must be advised of appeal rights as set forth in figure 4-4.

4004. FORMAL REPORT OF OFFICER NONJUDICIAL PUNISHMENT (NJP) OR DISPOSITION OF ALLEGATIONS OF MISCONDUCT

> CH 1 1. The first OEGCMA in the officer's chain of command shall forward a written report of the officer's NJP directly to the show cause authority within the chain of command or to the Show Cause Authority geographically located nearest to the command, whichever is appropriate. The OEGCMJ will provide any intermediate commanders and CMC (JAM) with a copy of the report of NJP. In appropriate cases, the SJA for the Show Cause Authority may contact intermediate commanders (ATTN: SJA's) for the commander's recommendation. If a Show Cause Authority imposes NJP upon an officer, the Show Cause Authority shall retain the case for a show cause decision and forward a copy of the report to CMC (JAM). A sample letter report of officer NJP is contained in figure 4-5. The purpose of the report of officer NJP is to provide a complete record of the hearing and misconduct for entry into the officer's OMPF and to provide the Show Cause Authority with sufficient information to make the decision whether to process the officer for administrative separation. A copy of the evidence considered, or photographic representations of evidence that is not readily included, should be provided with the report.

2. The report of officer NJP shall not be made to CMC (JAM) until:

a. The appropriate authority has acted finally upon an appeal of NJP, or a reasonable period of time has elapsed after the imposition of NJP without an appeal having been taken. In this regard, an appeal shall be submitted within 5 days of imposition of punishment, or the

right to appeal shall be waived in the absence of good cause shown. The fact that the officer signed a statement indicating no intent to appeal immediately after imposition of NJP does not prevent the officer from later submitting an appeal. See paragraph 7, Part V, MCM, 1998, and section 0110, JAGMAN; and/or

b. An appeal of a punitive letter of admonition or reprimand issued at NJP has been acted finally upon, or a reasonable period of time has elapsed after the officer concerned has received the letter of admonition or reprimand without an appeal having been taken. In this regard, an appeal shall be submitted within 5 days of receipt of the letter, or the right to appeal shall be waived in the absence of good cause shown. See section 0114, JAGMAN.

3. The report of NJP shall include the following:

a. A brief factual statement of the offense(s) and the NJP imposed

b. A concise, even-handed explanation of the circumstances surrounding the offense(s), including significant matters in aggravation and extenuation and mitigation.

c. Copies of all correspondence incident to the imposition of NJP and all matters relating to an appeal.

d. A verbatim copy of the record of the NJP hearing, or a copy of proceedings of the record of the court of inquiry or other formal fact-finding body upon which NJP was premised. (A citation for bulky records may be substituted provided the record is on file in the Office of the Judge Advocate General of the Navy.)

e. A copy of the investigation upon which NJP was based.

f. A recommendation as to the appropriateness of processing for administrative separation under SECNAVINST 1920.6A, and shall include the basis for such recommended course of action.

g. A copy of the report of NJP with the commander's recommendation for administrative processing should be provided to the officer. If there is a recommendation for a Board of Inquiry (BOI), the officer shall be allowed an opportunity to submit a resignation request with an appropriately characterized discharge or retirement, if eligible, at the current or next lower grade (see figure 4-8). Any retirement/resignation request made at this time shall be enclosed in the report of NJP.

4. In other cases of substantiated serious officer misconduct not involving NJP (including courts-martial where no dismissal was adjudged or approved, and non-traffic civilian convictions), a similar

report shall also be forwarded with recommendations concerning processing.

a. Serious officer misconduct is defined as any behavior for which administrative separation processing would be appropriate under SECNAVINST 1920.6A.

b. Substantiated misconduct includes a finding or opinion of misconduct in a written investigation, civilian conviction, or admission.

c. While minor traffic offenses need not be reported, all driving under the influence or driving while intoxicated convictions must be reported.

4005. COURT-MARTIAL OF OFFICERS

1. The Commandant of the Marine Corps (JAM) (Report Symbol EXEMPT), will be notified when charges are preferred against an officer. The initial report will be made in the manner set forth in paragraph 4002. In addition, the cognizant commander shall forward all favorable/ unfavorable matter from the individual's OQR to CMC (JAM).

2. Upon completion of a court-martial and action by the convening authority pursuant to R.C.M. 1107, MCM, 1998, the cognizant commander will cause the following actions to be taken, as appropriate:

a. If the officer was acquitted, or the findings and sentence were disapproved or set aside, have local orders issued reassigning the officer, or request that CMC (MMOA) originate orders reassigning the officer.

b. If the officer was convicted, a copy of the court-martial order will be forwarded to CMC (JAM), in addition to routine distribution, and:

(1) When the sentence imposed requires approval of the President or Secretary of the Navy prior to execution and the officer is not within CONUS, the convening authority shall:

(a) Request CMC (MMOA) originate orders directing the officer's immediate return to CONUS to await final action; and

(b) Advise the CONUS command to which the officer is ordered by message of the charges; findings, sentence, and actions thereon; and any other information pertinent to ensure adequate restraint of the officer. Ensure that CMC (JAM) is an information addressee.

(2) When the sentence imposed requires approval of the President or Secretary of the Navy prior to execution, and the officer is within CONUS, the convening authority shall advise CMC (JAM) by letter or message of the findings, sentence, and action thereon; the command to which the officer will be assigned or attached; and the exact nature and extent of restraint, if any.

3. When an officer has been transferred to a command to await final disciplinary action in the manner prescribed in paragraph 4005.2, the cognizant commander will notify CMC (MMOA) by message as soon as the officer joins the command. The message should indicate the unit to which the officer is being assigned or attached, and should set forth the exact nature and extent of the restraint contemplated while the officer awaits final action on his/her sentence.

4. The Secretary of the Navy has proscribed discharging a dismissed officer outside CONUS, except under special circumstances and upon request to the Secretary of the Navy.

5. When a recommendation is made to the Secretary of the Navy, via CMC (JAM), to execute a sentence to dismissal by reason of violation of the conditions of suspension, cognizant commands should follow the same procedure prescribed in paragraphs 4005.2 and 4005.3, as appropriate.

> CH 1 4006. ADMINISTRATIVE SEPARATION PROCESSING. All lieutenant generals in command are designated as Show Cause Authorities. Any reports submitted in accordance with paragraph 4004 will be submitted to either the Show Cause Authority within the chain of command or the Show Cause Authority geographically located nearest to the command for a decision whether the officer should be required to show cause for retention. Any subsequent separation for cause action will be taken pursuant to SECNAVINST 1920.6B. If a Show Cause Authority determines that an officer’s case does not warrant separation for cause processing, the Show Cause Authority shall forward the case to CMC (JAM) with an appropriate recommendation. Only DC M&RA may terminate separation for cause proceedings.

4007. Resignations AND BOARD OF INQUIRY WAIVERS SUBMITTED WHILE MISCONDUCT/SUBSTANDARD PERFORMANCE ISSUES ARE PENDING

1. An officer may tender a resignation at any time during, or in anticipation of, Show Cause processing. The following guidance applies to resignations offered under these circumstances. Resignations tendered "in lieu of trial by courts-martial" do not come within this section, and are handled under the provisions of Marine Corps Order P1900.16E (MARCORSEPMAN).

a. A request submitted under the conditions outlined herein must state whether the resignation is being offered under paragraph 5002 (a standard resignation) or 4104 (a resignation for cause/in lieu of further administrative processing) of MCO P1900.16E (MARCORSEPMAN). The request must reference the specific paragraph, as that designation

will determine what information is entered on the DD 214 and whether a Reserve commission is authorized (regardless of whether requested).

b. CMC (M&RA) is the denial authority for all resignations. The type of resignation and the characterization of service offered are important factors in this decision, and are therefore critical in each submission.

(1) If the resignation is tendered under paragraph 5002 of MCO P1900.16E (MARCORSEPMAN) [change of career intentions], normal resignation format and procedures should be followed, except that the resignation should be submitted in letter format to CMC (JAM) via the chain of command.

(2) If the resignation is under paragraph 4104 of MCO P1900.16E (MARCORSEPMAN)[a resignation for cause/in lieu of further administrative processing], the following guidance applies:

(a) The resignation must state that it is for cause and is being offered in lieu of further administrative separation processing under paragraph 4104 of MCO P1900.16E (MARCORSEPMAN).

(b) The resignation must state whether it is unqualified (least favorable characterization is honorable), qualified (least favorable characterization is general), or for the good of the service (least favorable characterization is other than honorable) under the definitions contained in enclosure (1) to SECNAVINST 1920.6A, and must use the language in paragraph 4104.3 of MCO P1900.16E (MARCORSEPMAN) to state what characterization of service will be accepted and that the consequences of that characterization are understood by the requesting officer.

(c) The resignation need not, and should not, request a specific separation date since it is effective upon approval by the Secretary of the Navy and subsequent issuance of the discharge message from CMC (MMSR).

c. The resignation should provide the basis (i.e., the nature and circumstances of the conduct that occasioned it) in the body of the request (e.g., NJP, civilian conviction, court-martial).

d. A regular officer resigning due to misconduct is not entitled to a Reserve commission, and that fact should be recognized and commented upon within the body of, and endorsements to, the resignation request.

e. A sample resignation in lieu of administrative processing is provided at figure 4-9.

2. An officer may waive a BOI at anytime during, or in anticipation of, Show Cause processing. A waiver of a BOI may not be conditional. The waiver shall include the following:

a. A statement that the officer is voluntarily waiving his or her right to a BOI.

b. A statement that the basis for the waiver of the BOI stems from the officer's misconduct and/or substandard performance of duty established by a relevant investigation or other documentation.

c. A statement that the officer admits committing the alleged misconduct or agrees that the performance of duty was substandard.

d. If the officer is eligible for retirement, a statement that the officer understands that s/he may be retired in the grade next inferior to that in which the officer is currently serving if the Secretary of the Navy determines that the inferior grade was the highest grade in which the officer served satisfactorily.

e. If the officer is not eligible for retirement, paragraph 4104.3c, MARCORSEPMAN, must be included stating that the officer understands s/he could receive an other than honorable characterization of service.

f. A statement that the officer understands that s/he may submit a sworn or unsworn statement or other materials on his/her behalf, and that the officer understands that statements submitted in connection with the request, including admissions of guilt, are not admissible in a court-martial except as provided by Military Rule of Evidence 410, but may be admissible at other proceedings.

g. A statement that the officer understands that s/he may be required to reimburse the U.S. for advance education assistance that included an active duty service requirement that has not been completed

h. A statement that the officer understands that once the request is submitted, it may be withdrawn only with the permission of the Secretary of the Navy.

i. A statement that the officer has consulted with a qualified defense counsel, including the counsel's name, grade, and branch of service.

3. A sample waiver of a BOI is at figure 4-10.

4008. <u>ADMINISTRATIVE SEPARATION PROCESSING WITHOUT BOARD ACTION</u>. In certain circumstances, a commander or the Show Cause Authority may recommend to the Secretary of the Navy that an officer be separated

without a BOI. The following procedures and guidelines apply to these cases:

1. In cases in which the recommendation for separation without board action originates with the Show Cause Authority, notification will be prepared by CMC (JAM). The original notification will be forwarded via the chain of command, and a facsimile copy will be provided directly to the OEGCMJ or designee for use in notifying the respondent. The respondent shall be formally served with the facsimile copy of the notification documents, and service of these documents constitutes the respondent's official notification.

a. The OEGCMJ should ensure that the respondent is served within 2 working days of receipt, and the originals provided to the respondent upon receipt.

b. The respondent's statement in reply to the recommendation (or a written waiver of the right to respond) should be submitted within 5 working days of the Respondent's receipt of notification. The OEGCMJ may grant an appropriate delay in response time upon written application with supporting reasons for such delay, and by written grant of a specific period of delay. The entire record of correspondence, including any requests for, and grant or denial of, delay shall be forwarded with the respondent's reply or waiver of the right to reply. The OEGCMJ (and relevant subordinate commanders) shall provide written endorsements for use by the Show Cause Authority in evaluating the case.

2. In cases in which the recommendation for separation without board action originates with the officer's commanding officer, the notification of the separation recommendation will be prepared by the commanding officer in accordance with SECNAVINST 1920.6A. A sample notification is included at figure 4-10.

a. The commanding officer shall serve the notification on the respondent.

b. The respondent shall be directed to submit a statement regarding the separation recommendation (or a waiver) using the same parameters outlined previously relating to cases originating with the Show Cause Authority.

c. In this variation on the process, the same package, including all recommendations, notification, documentation substantiating the conduct or performance, and any matters submitted by the respondent, shall be forwarded to the Show Cause Authority via the OEGCMJ. CMC (JAM) will contact the appropriate MEF and Force commanders (Attn: SJA) for the commander's recommendation.

4009. MINIMUM QUALIFICATIONS FOR BOARD OF INQUIRY RECORDER AND LEGAL ADVISOR

1. The recorder for a BOI shall be a judge advocate in the pay grade of 0-3 or above who has had at least 1 year of experience as a trial or defense counsel.

2. If the OEGCMJ appoints a legal advisor for a BOI, the legal advisor shall be a judge advocate in the pay grade of 0-4 or above who has previously been a BOI recorder or a BOI counsel for the respondent, or who is or has been a military judge or a staff judge advocate to an OEGCMJ.

3. If the minimum qualifications for the BOI recorder or legal advisor cannot be met, the SJA for the OEGCMJ may request a waiver of the minimum requirements from CMC (JAM).

4. This paragraph is intended to ensure that adequately qualified personnel are detailed as BOI recorders and legal advisors and is not intended to, and does not, create any rights, entitlements, or defenses arising out of the failure to comply with this paragraph.

4010. TIME LINES FOR PROCESSING OF OFFICER CASES

1. Every effort should be made to meet the deadlines and processing goals established herein.

> CH 1 2. Reports of Officer NJP/Misconduct shall be forwarded to the Show Cause Authority as follows:

a. Fourteen days from the imposition of NJP if no appeal is submitted; OR

b. Fourteen days from final action on the NJP appeal; or

c. Fourteen days from any other action requiring formal reporting (including court-martial and appropriate civilian convictions).

3. Boards of Inquiry

>CH 1 a. The Show Cause Authority will convene or direct the OEGCMJ of a respondent to convene a BOI in appropriate cases. Notifications to convene BOIS are prepared following the Show Cause Authority's decision to direct a BOI. The SJA for the Show Cause Authority or CMC (JAM) for DC M&RA will forward the original notification and order to convene the BOI and an advance facsimile copy of these documents to the OEGCMJ of the respondent. The respondent shall be formally served with a copy of these notification documents, and service of the copy of these documents constitutes the respondent's official notification of proceedings.

When the original is received it should then be provided the respondent, and an acknowledgment of receipt noted for the record.

b. The OEGCMJ should ensure that the respondent is served with the copy of the notification within 2 working days of its receipt by the command.

c. The OEGCMJ should ensure that each BOI is scheduled to commence between 30 and 45 days of the date the respondent is served with notice of the BOI. The OEGCMJ may grant a respondent an appropriate delay in the commencement of the BOI based upon a written application by the respondent showing good cause. Any request for, and grant or denial of, delay will be in writing and appended to the record forwarded to the Show Cause Authority.

d. The BOI transcript should be completed and served on respondent's counsel within 7 days of the conclusion of the hearing.

e. Respondent's counsel shall be provided 5 working days to review and return the transcript with a statement that the record has been reviewed, noting any errors.

f. The BOI report and transcript shall be provided to the members of the board for their review and any corrections immediately upon return from counsel, and the members of the board should complete their review and authenticate the report and transcript within 7 working days of receipt by the senior member.

g. The final board report should be served on respondent's counsel within 2 working days of authentication by the members.

h. Respondent's counsel shall be provided 5 working days after receipt of the report of the BOI to submit the respondent's rebuttal or waiver of rebuttal.

i. Following a period of 5 working days for administrative review, the entire package shall be provided to the OEGCMJ for endorsement.

j. All processing commands are encouraged to maintain a continuing dialogue on any case in the BOI processing chain, and to exchange information which would aid any superior headquarters in ensuring expedited review.

>CH 1 4. The OEGCMJ will forward a report of a BOI with appropriate recommendations to the Show Cause Authority to lieutenant generals in command.

5. The following chart is provided for ready reference:

Action Takes Place on Day Number	Processing Goal for This Action in Days	Required Action
1	0	Receipt of notification of BOI
2-3	2	Respondent served with notification of BOI
32-33	30	30-day preparation period expires
34-48	15	BOI scheduled and conducted
49-55	7	BOI transcript completed
56-60	5	Respondent’s counsel reviews and returns transcript
61-67	7	Members sign BOI report and authenticate transcript
68-69	2	BOI report served on respondent’s counsel
70-74	5	Respondent’s counsel submits rebuttal comments
75-79	5	Report of BOI forwarded to OEGCMJ for endorsement
80-82	3	Endorsement by the OEGCMJ

(COMMAND TITLE)

(REPORT CONTROL SYMBOL MC-1621-04)

NEW CASE(S)

LAST NAME, First Name MI
Grade/date of grade
SSN/MOS
Component
Unit (include major command)
Marital Status
Whether or not selected for promotion
Allegation of misconduct: Explain allegation(s).
Chronology and status:

Date	Event	Day Count

ONGOING CASES

DOE, John E.
WO/1 Feb 97
123 45 6789/1234
USMC
MWSG-37, 3d MAW
Single
Not selected for promotion
Allegation of misconduct: Engaged in adultery with enlisted Marine's wife during Feb 98.
Chronology and status:
8 Mar 98 - First notified. Preliminary inquiry initiated. (0)
21 Mar 98 - Preliminary inquiry completed. Command intends to offer CG's NJP. (14)
31 May 98 - CG's NJP IMPOSED. Punishment: letter of reprimand Report of NJP in preparation. (85)
30 Jun 98 - Report of misconduct forwarded to MARFORPAC for endorsement. CG 3d MAW recommended SNO not be required to show cause for retention in the Marine Corps. (115)
31 Jul 98 - Report of misconduct forwarded to HQMC (JAM) via (courier)(FedEx)(express mail)( ). (146)

Figure 4-1.--Format for Monthly Officer Misconduct Report.

HEADING

SSIC
Code
Date

From: Commanding General/Officer
To: (Officer concerned)

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

Ref: (a) Paragraph 4d, Part V, MCM, 1998

Encl: (1) Copy of record of formal fact-finding body

1. You are hereby informed that I intend to impose NJP on you based upon the information contained in the enclosure.

2. Under the reference, an Article 15, UCMJ hearing need not be conducted in your case. The enclosure is the record of the formal fact-finding body in which you were accorded the rights of a party respecting the charge(s) against you.

3. You are advised that the offense(s) for which you will receive nonjudicial punishment is/are: (List offense(s) and respective UCMJ articles violated).

4. You are advised that under the reference, you have the following rights with regard to the proposed NJP:

a. Unless attached to or embarked in a vessel, the right to refuse NJP.

b. The right to submit, in writing, any matter in defense, extenuation, or mitigation, for consideration by me in determining whether you committed the offense in question and, if so, an appropriate punishment.

c. The right to appeal the NJP to the next superior authority, if you consider it unjust or disproportionate to the offense. Such an appeal must be made within a reasonable time following the imposition of NJP. In the absence of unusual circumstances, an appeal made more than 5 days following imposition of NJP may be considered as not having been made within a reasonable time. Such an appeal must be in writing and should include your reasons for regarding the NJP as unjust or disproportionate. You may be required to undergo NJP imposed while your appeal is pending, except that if action is not taken on the appeal 5 days after the appeal was submitted, and you so

Figure 4-2.--Notification of Intent to Impose NJP.

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

request, any unexecuted punishment involving restraint shall be stayed until action on the appeal is taken.

5. You are further advised that a report of this NJP will be made to CMC and that you may be subject to involuntary separation proceedings directed by CMC. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

6. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within 5 working days.

Signature

_____
(Date)

FIRST ENDORSEMENT

From: (Officer concerned)
To: Commanding General/Officer

Ref: (b) SECNAVINST 1920.6B

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment. I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. I understand that action under reference (b) is not precluded by my acceptance of NJP.

_____
(Signature of accused)

_____
(Date)

_____
(Witness, typed or printed name)

Figure 4-2.--Notification of Intent to Impose NJP--Continued.

HEADING

SSIC
Code
Date

From: Commanding General/Officer
To: (Officer concerned)

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

Ref: (a) Paragraph 4, Part V, MCM, 1998
(b) SECNAVINST 1920.6B

1. You are hereby notified that it is my intention to conduct an Article 15, UCMJ, hearing in accordance with reference (a). Prior to that hearing, you are advised of the following:

a. That you are accused of: (include a statement describing the alleged offenses--including the article(s) of the UCMJ).

b. That you may, upon request, examine available statements and evidence upon which the allegations are based.

c. That you have the right not to make any statement concerning this/these offense(s).

d. That any statement you do make may be used against you during these proceedings or in trial by court-martial or in administrative separation proceedings under reference (b).

e. That you may consult with a lawyer, either a civilian lawyer retained by you at your own expense, or a judge advocate at no expense to you, if one is reasonably available.

f. That you will receive a hearing at which you will be accorded the following rights:

(1) To be present before the officer conducting the hearing or, if you waive such personal appearance, to submit written matters for consideration;

(2) To be advised of the offense(s) of which you are suspected;

(3) That you will not be compelled to make any statement regarding the offense(s) charged and that any statement you do make can be used against you;

Figure 4-3.--Notification of Article 15, UCMJ Hearing.

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

(4) To be present during the presentation of all information against you, including the testimony of witnesses present and the receipt of written statements. Copies of any statements will be furnished to you;

(5) To have made available to you for inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

(6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation or defense of the alleged charge(s). Matters in mitigation do not constitute a defense but do reduce the degree of culpability. Such matter might include a fine military record, either previous or subsequent to the alleged offenses. Matters in extenuation are matters that render an offense less aggravated or reprehensible than it would otherwise be, but such matters also do not constitute a defense. A matter offered in defense is offered as a reason in law or in fact why you should not be found guilty of the charges alleged;

(7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative. It is your own obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer; and

(8) To have the proceeding open to the public unless good cause for closing the proceeding can be shown or unless the punishment to be imposed will not exceed restriction for 14 days and an oral reprimand.

2. You are further advised that if NJP is imposed, you have the right to appeal to the next superior authority within 5 working days, if you consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

3. Unless attached to or embarked in a vessel, you have a right to refuse NJP.

4. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

Figure 4-3.--Notification of Article 15, UCMJ Hearing--Continued.

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within 5 working days.

Signature

_____
(Date)

FIRST ENDORSEMENT

From: (Officer concerned)
To: Commanding General/Officer

Subj: NOTIFICATION OF ARTICLE 15, UCMJ HEARING

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment; I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. Prior to making this decision, I have had the opportunity to consult with a lawyer.

_____
(Signature of accused)

_____
(Date)

_____
(Witness, typed or printed name)

Figure 4-3.--Notification of Article 15, UCMJ Hearing--Continued.

SSIC
Code
Date

From: [Officer Concerned]
To: [NJP Authority]

Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16E (MARCORSEPMAN)

1. I [Grade First Name MI Last Name SSN/MOS USMC(r)], assigned or attached to [unit], have been informed of the following facts concerning my right of appeal as a result of [NJP authority] nonjudicial punishment held on [date NJP imposed].

2. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the 5 day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

a. The appeal must be in writing.

b. There are only two grounds for appeal; that is:

(1) The punishment was unjust;

(2) The punishment was disproportionate to the offense for which it was imposed.

3. I understand that, if I submit an appeal, it must be referred to a military lawyer for consideration and advice before action is taken on the appeal.

4. _____ I intend to appeal the imposition of NJP.

_____ I do not intend to appeal the imposition of NJP.

Figure 4-4.-Acknowledgment of NJP Appeal Rights.

Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

[If a Board of Inquiry will be recommended, add the following language]:
5. I have been notified of my right to submit a request for [resignation][retirement] in lieu of administrative separation processing.

_____ I desire to submit a request for resignation/retirement in lieu of administrative separation processing in accordance with references (a) and (b).

_____ I do not desire to submit a request for resignation/retirement in lieu of administrative separation processing.

_____ _____
[signature] [date]

_____ _____
[witness signature] [date]

Figure 4-4.--Acknowledgment of NJP Appeal Rights--Continued.

HEADING

SSIC
Code
Date

From: [Officer Imposing NJP]
To: Commandant of the Marine Corps (JAM)

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (GRADE, FULL NAME, SSN, MOS) (REPORT CONTROL SYMBOL EXEMPT)Ref: (a) MCO P5800.16A (LEGADMINMAN)
(b) MCM, 1998
(c) JAGINST 5800.7C (JAGMAN)
(d) UCMJ
(e) SECNAVINST 1920.6B
(f) MCO P1900.16E (MARCORSEPMAN)

Encl: (1) Preliminary inquiry/formal fact-finding body report [Include,at a minimum, items listed in paragraph 4004.3, LEGADMINMAN]
(2) Record of NJP hearing
(3) Acknowledgment of advance educational assistance reimbursement requirement
(4) Resignation request

1. This report is submitted per paragraph 4003 of reference (a)

2. On [date], following the applicable provisions of references (b), (c), and (d), nonjudicial punishment was imposed by the undersigned on [grade name]. The charges and disposition thereof are as follows:

Charge(s)	Plea	Finding	Appeal/Status
Article ____	[G/NG]	[G/NG]	[Yes/Denied]

3. [Grade name] voluntarily accepted NJP and the following punishment was imposed: [set forth punishment imposed].

4. The circumstances giving rise to the imposition of nonjudicial punishment in this case are: [Provide concise, even-handed explanation of the offense(s), including significant matters in aggravation, extenuation and mitigation.]

5. A record of the NJP hearing conducted in accordance with paragraph 4, part V of reference (b) is contained in enclosure (2). The accused was present at the hearing, was accorded all rights including the right to consult with a lawyer. [Grade name] officer indicated acceptance of the imposition of nonjudicial punishment and did not desire to demand trial by court-martial. Nonjudicial punishment was

Figure 4-5.--Sample Letter Report of Officer NJP.

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (GRADE, FULL NAME, SSN, MOS) (REPORT CONTROL SYMBOL EXEMPT)

imposed in accordance with section 0110 of reference (c), and Article 15 of reference (d). All requirements of paragraph 4, Part V of reference (b) have been satisfied.

6. [Grade name] has been accorded the opportunity to read the report of nonjudicial punishment in this case and [did/did not] desire to exercise the right to appeal the punishment. [Grade name] has made a statement, enclosure ( ), and [does/does not] desire to exercise the right to appeal the punishment.

7. I [do/do not] recommend that [grade name] be required to show cause for retention in the Marine Corps at a Board of Inquiry.

[Add the following, as appropriate]:
8. [Grade name] has been advised of the reimbursement requirement for advanced education assistance. [Grade name's] acknowledgment of this requirement is provided as enclosure (3). I do/do not recommend that the reimbursement requirement be waived in this case. [See paragraph 4007.]

9. [Grade, name] has submitted a request for resignation/retirement in lieu of administrative separation processing in accordance with references (e) and (f). I recommend approval/disapproval.]

[Signature]

Figure 4-5.--Sample Letter Report of Officer NJP--Continued.

ACKNOWLEDGMENT OF ADVANCE EDUCATION ASSISTANCE REIMBURSEMENT REQUIREMENT

I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

_____ _____
Signature Date

Figure 4-5.-Sample Letter Report of Officer NJP-Continued.

SSIC
Code
Date

FOR OFFICIAL USE ONLY

From: [Senior Board Member Identification]
To: Secretary of the Navy
Via: Commandant of the Marine Corps (JAM)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(R)]

Ref: (a) CMC ltr 1920 JAMO of [date] [letter directing BOI]
(b) CG, MARFORXXX ltr 1920 SJA of [date] [convening order]
(c) SECNAVINST 1920.6B

Encl: (1) Transcript of the Board's proceedings with exhibits
(2) Findings and recommendations worksheet
(3) Respondent's comments on the report of the BOI

1. As directed by references (a) and (b), a Board of Inquiry convened at [command/location] and conducted a hearing in accordance with the requirements of reference (c).

2. Enclosure (1) is forwarded pursuant to reference (c). Enclosure (2) is the board's findings and recommendations. As indicated by enclosure (3), defense counsel received a copy of the transcript and submitted no deficiencies, but did submit rebuttal comments on behalf of the respondent.

3. <u>REASONS FOR SHOWING CAUSE FOR RETENTION</u>. The purpose of the Board of Inquiry was to recommend whether the respondent should be retained in the U. S. Marine Corps [Reserve]. The board considered these specific reasons for separation:

a. Misconduct, moral or professional dereliction: Commission of a military offense or civilian offense which, if prosecuted under the Uniform Code of Military Justice (UCMJ), could be punished by confinement of 6 months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction; and/or

b. Substandard performance: failure to demonstrate acceptable qualities of leadership required of an officer of his/her grade.

c. [Other bases for separation that SNO was advised of per reference (a).]

Figure 4-6.--Sample Board of Inquiry Report (Not Retirement Eligible).

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(R)]

4. ACTS ALLEGED. The respondent allegedly...

5. RESPONDENT'S POSITION WITH RESPECT TO THE ALLEGATIONS: The respondent asserts that...

PARAGRAPHS SIX AND SEVEN WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS:

CASE CLOSED: ALLEGATIONS UNSUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence did not prove the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the case be closed. See enclosure (2).

CASE CLOSED: ALLEGATIONS SUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retained and that the case be closed. See enclosure (2).

DISCHARGE

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be discharged and that the characterization be (honorable)(general (under honorable conditions))(other than honorable). See enclosure (2).

8. SERVICE AND BACKGROUND. As required by reference (c), the following information is submitted concerning the respondent's service record and background:

a. Date of birth:

b. Marital Status:

c. Civilian Education:

d. Date of Appointment:

Figure 4-6.-Sample Board of Inquiry Report (Not Retirement Eligible)-Continued.

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(R)]

e. Date of Rank:

f. MOS:

g. Service Schools: See NAVMC 118(8a) at Government Exhibit _.

h. Decorations/awards: See NAVMC 118(9) at Government Exhibit _.

i. Disciplinary History: None

9. PRESERVICE MISCONDUCT CONSIDERED. None

10. MINORITY REPORT. None.

_____
SENIOR MEMBER DATE

_____
MEMBER DATE

_____
MEMBER DATE

Copy to:
(Chain of Command)

Figure 4-6.--Sample Board of Inquiry Report (Not Retirement Eligible)--Continued.

SSIC
Code
Date

FOR OFFICIAL USE ONLY

From: [Senior Board Member Identification]
To: Secretary of the Navy
Via: Commandant of the Marine Corps (JAM)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(r)]

Ref: (a) CMC ltr 1920 JAMO of [date] [letter directing BOI]
(b) CG, MARFORXXX ltr 1920 SJA of [date] [convening order]
(c) SECNAVINST 1920.6B

Encl: (1) Transcript of the Board's proceedings with exhibits
(2) Findings and recommendations worksheet
(3) Respondent's comments on the report of the BOI

1. As directed by references (a) and (b), a Board of Inquiry convened at [command/location] and conducted a hearing in accordance with the requirements of reference (c).

2. Enclosure (1) is forwarded pursuant to reference (c). Enclosure (2) records the Board's findings and recommendations. As indicated by enclosure (3), defense counsel received a copy of the transcript and submitted no deficiencies, but did submit rebuttal comments on behalf of the respondent.

3. <u>REASONS FOR SHOWING CAUSE FOR RETENTION</u>. The purpose of the Board of Inquiry was to recommend whether the respondent should be retired from the U. S. Marine Corps [Reserve] and, if so, at what grade. The board considered these specific reasons for retirement:

a. Misconduct, moral or professional dereliction: Commission of a military offense or civilian offense which, if prosecuted under the Uniform Code of Military Justice (UCMJ), could be punished by confinement of 6 months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction; and/or

b. Substandard performance: Failure to demonstrate acceptable qualities of leadership required of an officer of his/her grade.

c. [Other bases for separation that the respondent was notified of per reference (a)].

Figure 4-7.-Sample Board of Inquiry Report (Retirement Eligible).

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(R)]

4. ACTS ALLEGED. The respondent allegedly...

5. RESPONDENT'S POSITION WITH RESPECT TO THE ALLEGATIONS: The respondent asserts that...

PARAGRAPHS SIX AND SEVEN WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS:

CASE CLOSED: ALLEGATIONS UNSUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence did not prove the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the case be closed. See enclosure (2).

CASE CLOSED: ALLEGATIONS SUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent not be retired and that the case be closed. See enclosure (2).

RETIREMENT: CURRENT GRADE (NO OTH)

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention. The Board found that the respondent's misconduct was insufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible and that service in the current grade is satisfactory. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in his/her current grade. See enclosure (2).

RETIREMENT: CURRENT GRADE (OTH BUT GOOD RECORD)

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention; that the respondent's misconduct was sufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible; that the respondent served in the current grade at least 6 months; and that the respondent's record is otherwise so

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--Continued.

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(R)]

eritorious as to demonstrate the respondent has served satisfactorily in the current grade. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in his/her current grade. See enclosure (2).

RETIREMENT: INFERIOR GRADE

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention; that the respondent's misconduct was sufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible; that the respondent served in the current grade for at least 6 months; and that the respondent's record is not otherwise so meritorious as to demonstrate the respondent has served satisfactorily in the current grade. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in the next inferior grade. See enclosure (2).

8. SERVICE AND BACKGROUND. As required by reference (c), the following information is submitted concerning the respondent's service record and background:

a. Date of birth:

b. Marital Status:

c. Civilian Education:

d. Date of Appointment:

e. Date of Rank:

f. MOS:

g. Service Schools: See NAVMC 118(8a) at Government Exhibit _.

h. Decorations/awards: See NAVMC 118(9) at Government Exhibit _.

i. Disciplinary History: None

9. PRESERVICE MISCONDUCT CONSIDERED. None.

10. MINORITY REPORT. None.

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--Continued.

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME MI LAST NAME SSN/MOS USMC(R)]

_____

SENIOR MEMBER DATE

_____

MEMBER DATE

_____

MEMBER DATE

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--Continued.

SAMPLE BOARD OF INQUIRY FINDINGS WORKSHEET

(Note: Below is an example using the most common reasons for separation. Each reason listed by the BOI order must be listed on the findings worksheet)

FINDINGS OF THE BOARD OF INQUIRY

By a preponderance of the evidence, this Board of Inquiry finds that Major John Doe 123 45 6789/4402 USMC,

Has/Has not demonstrated Substandard Performance of Duty by:

_____ Failure to demonstrate acceptable qualities of leadership required of an officer of his grade.

_____ Failure to properly discharge the duties expected of an officer of his grade and experience.

Has/Has not engaged in personal or professional conduct that is unbecoming an officer as evidenced by:

_____ The commission of a military or civilian offense that, if prosecuted under the UCMJ, could be punished by confinement of 6 months or more, or if prosecuted under the UCMJ, would require specific intent for conviction. Specifically:

____ A violation of Article xxx, UCMJ.
(list each article separately)

RECOMMENDATIONS OF THE BOARD OF INQUIRY (Separation BOI)

_____ By majority vote, the Board of Inquiry recommends that Major John Doe 123 45 6789/4402 USMC be separated from the naval service for the reason(s) listed above. The Board of Inquiry further recommends that Major Doe's service be characterized as:

_____ Honorable

_____ General (Under Honorable Conditions)

_____ Other Than Honorable

_____ By majority vote, the Board of Inquiry finds that none of the reasons listed above warrant Major Doe's separation from the naval service and the case is, therefore, closed.

(SEE ENCLOSURE (5) OF SECNAVINST 1920.6B FOR GUIDANCE ON CHARACTERIZATION OF SERVICE RECOMMENDATION)

Figure 4-8.-Sample Board of Inquiry Findings Worksheet.

RECOMMENDATIONS OF THE BOARD OF INQUIRY (Retirement BOI)

_____ By majority vote, the Board of Inquiry recommends that Major John Doe 123 45 6789/4402 USMC be retired for the reason(s) listed above, and that:

____ Major Doe be retired in his current grade.

____ Major Doe be retired in the next inferior grade.

_____ By majority vote, the Board of Inquiry finds that none of the reasons listed above warrant Major Doe's involuntary retirement.

(SEE ENCLOSURE (8) OF SECNAVINST 1920.6B FOR GUIDANCE ON RETIREMENT GRADE RECOMMENDATION)

Figure 4-8.--Sample Board of Inquiry Findings Worksheet--Continued.

SSIC
Code
Date

From: [Officer Concerned]
To: Secretary of the Navy
Via: ( ) (Chain of Command)
( ) Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR RESIGNATION FOR CAUSE

Ref: (a) MCO P1900.16E (MARCORSEPMAN), paragraph 4104
(b) SECNAVINST 1920.6B

1. Pursuant to references (a) and (b), I voluntarily tender my (unqualified resignation, qualified resignation, or resignation for the Good of the Service)1 of my commission in the United States Marine Corps (Reserve) in lieu of (further) processing for administrative separation for cause.2

2. [Include "authorized characterization of service" statement required by paragraph 4104.3 of MARCORSEPMAN. This language must correspond with the type of resignation tendered above.3]

3. This resignation is based on (my nonjudicial punishment for_____, my civilian conviction for _____, my misconduct/substandard performance of duty by _____).

4. [Regular Officers] Pursuant to reference (b), I understand that a Reserve commission is normally not authorized for officers resigning for cause and I do not desire such a commission. (While I understand that pursuant to reference (b) a Reserve commission is normally not authorized for officers resigning for cause, if tendered, I would accept a commission in the United States Marine Corps Reserve.)

Figure 4-9.--Sample resignation in lieu of administrative processing.

1 See enclosure (1) to SECNAVINST 1920.6B.
2 The officer should not request a specific separation date. The resignation will be effective upon SecNav approval of the request.
3 The officer may request a higher characterization of service than the lowest that is authorized by the officer's request. This is simply a request that the Secretary of the Navy consider a higher characterization, and the Secretary is free to characterize at the lowest level authorized by the type of resignation offered. For example: An officer requesting a qualified resignation (least favorable characterization allowed is general) may state: "Based on my entire record of service, I request separation with an honorable characterization of service. However, I have been informed and understand that if my resignation in lieu of processing for administrative separation for cause is accepted, I may subsequently receive a certificate of general discharge from the Marine Corps; that such..."

Subj: REQUEST FOR RESIGNATION FOR CAUSE

5. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

SIGNATURE

Figure 4-9.--Sample resignation in lieu of administrative processing--continued.

SSIC
Code
Date

From: Commanding Officer
To: Second Lieutenant John Doe xxx xx xxxx/9901 USMCR

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN THE CASE OF SECOND LIEUTENANT John Doe XXX XX XXXX/9901 USMCR

Ref: (a) CO, ltr of
(b) SECNAVINST 1920.6B
(c) (Documentation)

Encl: (1) Sample Resignation Format
(2) Acknowledgment of Respondent's Rights

1. In reference (a), I am recommending your separation from the Marine Corps with an honorable characterization of service pursuant to reference (b). The specific factual basis supporting this recommendation is the substandard performance of duty documented in reference (c).

2. The specific reason for your separation is substandard performance of duty as evidenced by your failure to demonstrate acceptable qualities of leadership required of an officer of your grade (or other appropriate basis).

3. You are afforded the following rights regarding this recommendation for your separation:

a. The right to submit a statement to the Secretary of the Navy in rebuttal to this recommendation or to decline to make a statement.

b. The right to tender a resignation in lieu of separation processing. The format for such a resignation is included at enclosure (1).

c. The right to confer with a judge advocate concerning this matter.

d. The right to consult with a civilian counsel at your own expense. This right shall in no way be allowed to delay the orderly processing of this recommendation.

e. The right to be provided copies of the papers to be forwarded to the Secretary of the Navy to support your proposed separation. Any classified documents will be summarized.

Figure 4-10.--Sample notification/acknowledgment without board rights.

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN THE CASE OF SECOND LIEUTENANT John Doe XXX XX XXXX/9901 USMCR

4. You also have the right to waive the rights contained in paragraph 3(a)-(e), and any failure to respond as indicated in paragraph 5, below, shall constitute a waiver of these rights.

5. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

6. You are directed to acknowledge receipt of this notification and to designate your election of rights in enclosure (2). All matters you desire to submit concerning this recommendation are due to me within 5 working days of your receipt of this notice. You may request an extension of this time upon a timely showing of good cause.

COMMANDING OFFICER

Figure 4-10.-Sample notification/acknowledgment without board rights-continued.

SSIC
Code
Date

From: Second Lieutenant John Doe xxx xx xxxx/9901 USMCR
To: Commanding Officer,

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

Ref: (a) CO, ltr 1920 CO of

1. I acknowledge receipt of the reference informing me of the recommendation for my administrative separation from the Marine Corps.

2. I understand the factual basis for my recommended separation and understand that I am being recommended for an honorable characterization of service.

3. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

4. _____ I (do) (do not) desire to submit a statement to the Secretary of the Navy in rebuttal to this recommendation.

5. _____ I (do) (do not) desire to tender a resignation in lieu of separation processing.

6. _____ I (do) (do not) desire to confer with a judge advocate concerning this matter.

_____ I have conferred with_____ on _____.

7. _____ I (do) (do not) desire to consult with a civilian counsel at my own expense. I understand that the processing of my case shall in no way be unduly delayed to await the availability of such civilian counsel.

_____ I have conferred with_____ on _____.

Figure 4-10.--Sample notification/acknowledgment without board rights--continued.

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

8. _____ I (do) (do not) desire to be provided copies of the papers to be forwarded to the Secretary of the Navy to support the proposed separation. Any classified documents will be summarized.

JOHN DOE

Date:_____

Figure 4-10.--Sample notification/acknowledgment without board rights--continued.

SSIC
Code
Date

From: [Officer Concerned}
To: Secretary of the Navy
Via: (1) (Chain of Command)
(2) Commandant of the Marine Corps (JAM)

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16E (MARCORSEPMAN)

1. Pursuant to references (a) and (b), I voluntarily waive my right to a Board of Inquiry for processing for [administrative separation for cause][involuntary retirement]. (Note: Conditional language will not be accepted.)

2. (Insert a statement that the basis for the waiver stems from the officer's misconduct and/or substandard performance of duty established by a relevant investigation or other documentation, and a statement that the officer admits committing the alleged misconduct or agrees that the performance of duty was substandard.)

3. [Not retirement eligible] I have been informed and understand that if I am separated from the Marine Corps that I may receive a characterization of service from the Marine Corps which will state upon its face that it is under other than honorable conditions; that I may be deprived of substantial rights, benefits, and bounties which Federal or State legislation confers or may hereafter confer upon persons with honorable service in, or separated from, the Armed Forces, that I may expect to encounter substantial prejudice in civilian life in situations where the nature of service rendered in, or the character of separation from, the armed forces may have a bearing.

OR

3. [Retirement eligible] I have been informed and understand that I may be retired in the grade next inferior to that in which I am currently serving if the Secretary of the Navy determines that the inferior grade was the highest grade in which I served satisfactorily.

4. I have consulted with [insert counsel's name, grade, and branch of service] a qualified defense counsel.

5. I understand that I may submit a sworn or unsworn statement or other material on my behalf for consideration by the Secretary of the Navy, and that any statements submitted in connection with this

Figure 4-11.--Sample voluntary waiver of a board of inquiry.

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY

waiver, including admissions of guilt, are not admissible in a court-martial except as provided by Military Rule of Evidence 410, but may be admissible at other proceedings.

6. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advance education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

7. I understand that once this waiver is submitted, it may be withdrawn only with the approval of the Secretary of the Navy.

JOHN DOE

Date:_____

Figure 4-11.--Sample voluntary waiver of a board of inquiry--continued.

CHAPTER 5

ABSENTEES, DESERTERS, IHCA, AND IHFA

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CHAPTER 5

ABSENTEES, DESERTERS, IHCA, AND IHFA

5000. SCOPE

1. This chapter sets forth procedures and responsibilities for the processing of Marine Corps absentees and deserters, absentees from other branches of the armed forces who are being held by the Marine Corps pending return to their branch of the armed forces, and for Marines detained for civil charges.

2. If there is evidence at the time of absence which indicates that the individual is not an unauthorized absentee, or if such evidence subsequently develops, the unit commander will initiate an inquiry to determine if action is required under MCO P3040.4_, MARCORCASPROCMAN.

3. Caution shall be exercised to ensure that Marines who ultimately could be classified as "missing" are not initially reported as "unauthorized absentees" or "deserters." A Marine who, in a combat zone/while deployed to a contingency operation, is unaccounted for shall be listed initially as Duty Status, Whereabouts Unknown (DUSTWUN) rather than as UA or as a deserter status: MCO P3040.4_, MARCORCASPROCMAN, provides guidance for making missing status determinations.

4. In addition, the provisions of this chapter cover all Marine Corps personnel serving on, or ordered to report to, active duty in the armed forces of the United States and members of the Reserve components serving on active duty for training. See UCMJ, Article 2, and MCO P1001R.1_, MCRAMM.

5. The Deserter Information Point (DIP), Headquarters, U.S. Marine Corps, is required, under normal conditions, to enter every declared deserter in the Federal Bureau of Investigation's National Crime Information Center (NCIC) Wanted Persons File upon receipt of the DD Form 553 (Absentee Wanted by the Armed Forces). Expeditious reporting of unit diary entries and subsequent preparation and submission to the DIP of the DD Form 553 is required by all reporting units. Complete descriptive information must be provided on the DD Form 553 before entries can be made in the NCIC. The DIP is a 24-hour operation that can be contacted at (703) 614-3248/3376 or FAX (703) 614-3404/3499, DSN 224.

5001. DUTY STATUS, WHEREABOUTS UNKNOWN

1. If a Marine, [in a combat zone/while deployed to a contingency operation] -

a. Is absent from the parent command without authorized leave or orders;

b. Missed movement; or

c. Is otherwise unaccounted for;

2. Then take the following actions -

a. Make DUSTWUN unit diary entries per MCO P1080.40_, MCTFSPRIM.

b. Make appropriate DUSTWUN entries in the SRB/OQR per MCO P1070.12_, IRAM.

c. Immediately contact HQMC Casualty Section, DSN 278-9512 and complete a Personal Casualty Report (PCR) classifying the Marine as a DUSTWUN in regards to Casualty Status. The HQMC Casualty Section will assign a Casualty Assistance Calls Officer (CACO) to the Primary Next of Kin (PNOK) and Secondary Next of Kin (SNOK).

d. Immediately initiate an investigation to determine the Marine's proper duty/casualty status.

e. Once the investigation is complete, submit a supplementary PCR in accordance with MCO P3040.4_ classifying the Marine's status as Returned to Military Control, deceased, UA or deserter and make the appropriate unit diary and SRB/OQR entries.

f. IAW paragraph 8104, MCO P3040.4_, if the investigation supports a declaration of missing; submit the investigative report, its opinions, and a recommendation that the Marine be declared missing to CMC (MRC) within 10 days of the disappearance.

g. Coordinate with the HQMC Casualty Section to have the Marine's PNOK and SNOK notified of any change in status.

5002. UNAUTHORIZED ABSENCE STATUS

1. If a Marine -

a. Is absent from the parent command without authorized leave or orders;

b. Missed movement;

c. Failed to comply with stragglers orders; or

d. Failed to comply with permanent change of station orders;

2. Then take following actions -

a. Make unit diary entries per MCO P1080.40_, MCTFSPRIM.

b. Make appropriate entries in the SRB/OQR per MCO P1070.12_, IRAM.

3. The parent command will inventory and store all Government property and personal effects as prescribed by MCO P4050.38_.

4. After 48 hours - CONUS commanders will notify the primary next of kin telephonically of the absentee's status and request assistance in returning the absentee to military control. All other commanders will do the same when their absentee's dependents are residing in the local area.

5. Prior to the 10th day of unauthorized absence, the parent command will prepare and mail a letter advising the primary next of kin of the Marine's status and requesting assistance in returning the Marine to the parent command. Figure 5-1 is the suggested format that may be adapted to local needs. A copy of the letter will be filed on the document side of the Marine's SRB/OQR until return of the Marine and completion of administrative/disciplinary action.

5003. DESERTION STATUS

1. If a Marine -

a. Is absent from the parent command without authority over 30 days; or

b. Is believed to have gone to or is remaining in a foreign country, and to have applied for or accepted any type of asylum or residency permit from such country, or any governmental agency thereof; or

c. Is an escaped prisoner (see paragraph 5011 for detailed instructions); or

d. Is a person reported as being in an unauthorized absence status who has had access to Top Secret information during the last 12 months; or

e. Is a person who’s location is known, Commanders may publish a DD Form 553 to ensure the Marine is apprehended with dispatch.

2. Then take the following actions -

a. Inventory and store all Government property and personal effects as prescribed by MCO P4050.38_, if not previously accomplished.

b. Make required unit diary entries per MCO P1080.40_, MCTFSPRIM.

c. Make required OQR/SRB entries on applicable pages of the deserter's service record per MCO P1070.12_, IRAM.

d. Prepare and distribute the DD Form 553

(1) If insufficient information is available to complete the DD Form 553, the commanding officer will send a priority message to CMC (MMSB-10) requesting needed information. Ensure that the height, weight, hair, and eye color entries are made. In no case will an incomplete or unsigned DD Form 553 be distributed by a Marine's commanding officer without specific approval from CMC (PSL).

(2) If the Marine is dropped to desertion prior to the 31st day of absence per paragraphs 5003.1b through 1f, the reason for that action will be included in the remarks section of the DD Form 553.

(3) If the Marine is considered an escape risk or dangerous to self or others, is pending charges or under investigation for violations of the UCMJ other than unauthorized absence or desertion, is a violator of previous stragglers orders, or is drug/alcohol addicted, appropriate cautionary statements will be placed in the remarks section of the DD Form 553 in CAPITAL LETTERS.

(4) Units with FPO or APO addresses will indicate in the remarks section of the DD Form 553 whether the Marine deserted in CONUS or in a specific foreign country.

(5) Block by block instructions for completing the DD Form 553 are contained in figure 5-10.

(6) Distribute the DD Form 553 as specified in Figure 5-10.

(7) Immediately upon completion of Signature date block entry (18f), the DD Form 553 must be submitted electronically/facsimile to PSL in order to comply with NCIC Operating Standards for "Warrants For Wanted Persons." Due to guidelines set forth in the FBI, NCIC 2000 Operating Manual 1.1., a DD Form 553 must be entered into the NCIC terminal immediately or within a 24 hour time period from the date of signature.

(8) On the 31st day of absence, conduct a thorough audit of the SRB. If the Marine deserted and had the SRB in his/her possession, the parent command will notify CMC (PSL) by message that the original SRB is not held, and request a microfiche copy from CMC (MMSB-10) for creating a temporary service record per MCO P1070.12_, IRAM. Publication and submission of the DD 553 will not be delayed pending receipt of microfiche.

(9) Retain the OQR/SRB/HEALTH/DENTAL RECORDS until the date on which the period of absence exceeds the period during which a deserter would be returned to that command upon return to military control per Table 5-1, at that time forward to CMC (PSL), HQMC, 2 Navy Annex, Room 3312, Washington, DC 20380-1775.

5004. OFFICER ABSENTEES. The administrative processing for officer absentees is the same as for enlisted Marines, except that on the 7th day of absence a message report will be submitted to CMC (PSL and JAM)

(Report Symbol MC-1621-03). The report will include the date and hour of absence and any known circumstances.

5005. MARINES WITH FAMILY MEMBERS

1. Upon declaring a Marine who has dependents a deserter, every effort should be made to retrieve dependent ID cards. If dependents refuse to surrender their ID cards, the command concerned will send a representative to call on the cardholders to obtain the cards. If a cardholder still refuses to return the card, local medical facilities and military activities should be notified. A terminate DD Form 1172 will be submitted to the nearest Defense Enrollment Eligibility Reporting System/Realtime Automated Personnel Identification System (DEERS/RAPIDS) site or to the DEERS Enrollment Processing Center per MCO P5512.11_. Ensure a copy of the DD Form 1172 is placed in the sponsor's SRB/OQR prior to forwarding the records. Only in alleged or actual instances of fraud should the case be referred to the Naval Criminal Investigative Service.

2. The dependents of certain Marines may be entitled to payment of BAH after the absence commences. Refer to DoD Financial Management Regulation, Volume 7A, and MCO P1751.3_ concerning entitlement eligibility and specific instructions.

3. Dependents occupying Government quarters will be directed to vacate those quarters per MCO P11000.22.

5006. DETERMINATION OF UNAUTHORIZED ABSENCE

1. All units, but particularly deployed units (afloat or in a foreign country), must exercise extreme care in determining that a Marine is actually an unauthorized absentee and does not fall within the category of "missing persons," as that term is defined by MCO P3040.4_, MARCORCASPROCMAN.

2. In cases in which a Marine is originally reported as an unauthorized absentee and subsequently determined to be missing, appropriate service record and unit diary entries will be made to reflect the change in status. If a DD Form 553 has been published, a DD Form 616 (Report of Return of Absentee Wanted by the Armed Forces) will be distributed with an apology letter indicating the Marine's current status. A copy of the DD Form 616 will be forwarded to CMC (PSL).

3. [In a combat zone/while deployed to a contingency operation] - *see* section 5001 (DUSTWUN).

5007. ABSENTEES/DESERTERS HOSPITALIZED

1. The nearest Marine Corps activity receiving information an absentee or deserter is hospitalized in a Veterans' Administration, military, or civilian institution will notify CMC (PSL, MRC, MMEA-86A)

for disposition by the most expeditious means, followed by a naval message. The naval message will include, at a minimum, the Marine's name, SSN, nature of injury or illness, name and location of hospital, and point of contact at the hospital. Pending disposition instructions, the Marine will not be joined to the rolls of any unit or command.

5008. APPREHENSION OF ABSENTEES AND DESERTERS

1. Absentees may be apprehended by:

a. Members of the armed forces authorized by R.C.M. 302, MCM; or

b. Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth or Possession, or the District of Columbia; or

c. U.S. authorities in foreign countries, but only when authorized by an international agreement with the country concerned or by an agreement with the appropriate local authorities when such an agreement is within the purview of an existing international agreement. In such cases:

(1) Careful consideration must be given to possible international implications and adverse foreign reaction.

(2) Where apprehension cannot be accomplished or where doubt exists as to apprehension authority, a priority message report of the facts will be forwarded to CMC(PSL and JAM) requesting guidance.

d. Any officer or noncommissioned officer is authorized to apprehend or to cause the apprehension of any Marine absentee.

2. In the event that the DD Form 553 is not held by local civil, or military law enforcement agencies, commanding officers, officers in charge, and noncommissioned officers in charge are authorized to prepare a DD Form 553 to cause the immediate apprehension of any absentee, regardless of the length of absence. Prior to issuing the DD Form 553, verification of the Marines absence will be made with the parent command or with CMC (PSL). Once verified and properly prepared, fax the DD Form 553 to CMC (PSL) at (703) 614-3499. Distribution of the DD Form 553 will be limited to CMC (PSL), and parent command if applicable. All DD Form 553’s will be retained in the Marine’s SRB with a copy forwarded to OMPF. The unit diary entry dropping the Marine to desertion will not be made until the Marine meets the criteria for desertion, as per paragraph 5003.1.

5009. REWARDS AND CLAIMS

1. Rewards will be paid to local civil authorities in accordance with the provisions of the Financial Management Regulations (see DoD 7000.14-R, Vol. 10, Chapter 12, para. 120110).

2. Reward claims and claims for reimbursement of expenses for confinement of Marine absentees will be processed as follows:

a. Prisoner escort teams, upon absentee pick up, will leave a Statement to Accomplish Payment of Reward or Expenses for Return of Absentee (NAVMC 11145) (figure 5-2) for completion by local authorities. The escort team will ensure their return address is stamped on the bottom of the claim form prior to distribution. Instruct local authorities to forward the claim form to that address.

b. Upon receipt of a completed claim form, the prisoner escort team will prepare NAVCOMPT Form 2277 (Voucher for Disbursement and/or Collection), (figure 5-3) and forward both forms to DFAS-KSS, CODE FE, 1500 East 95th street, Kansas City, MO 64197-0001 for further processing.

5010. RETURN TO MILITARY CONTROL (RMC)

1. Absentees and deserters are RMC at the time and date:

a. They surrender to, are delivered to, or are apprehended by or for military authorities; or

b. Civil authorities holding them for some reason other than at the request of the military inform the military of their availability for return to military control.

2. Absentees and deserters shall be received at any military installation that is manned by active duty personnel. Immediate action shall be taken to transfer individuals to the nearest installation of their branch of military service having facilities to process absentees and deserters.

3. Assignment of Marines Returning to Military Control

a. Absentees will remain on the rolls of their parent organization upon RMC. Deserters RMC will be assigned as delineated in Table 5-1. In cases involving special or unusual circumstances, CMC (PSL) is authorized to deviate from Table 5-1 and direct assignment to other commands.

b. Upon delivery of the Marine to the major command by cross-country chasers, subsequent assignment within the command is a local matter. A major command is defined as one, which has a general court-martial convening authority (GCMCA); a unit is defined as the specific battalion, squadron, etc.

c. Deserters RMC absent less than 180 days will be returned to the major command from which absent. Deserters absent greater than 180 days, with the exception of those pending administrative or disciplinary action at the command from which absent, will be

reassigned to the non-operating force major command nearest the point of apprehension or surrender, compatible with their MOS (ground or aviation), and based upon their location (i.e. East/West of Mississippi) as depicted in Note 2 of Table 5-1.

d. Marines who are scheduled to be reassigned in accordance with Table 5-1 **will be returned to *the major command or unit from which absent - vi*ce being reassigned if *that major command or unit* has any pending administrative or disciplinary action, other than the present unauthorized absence**.

4. Return to Military Control While in a Foreign Country/Outside CONUS. Military attaches and mission chiefs are restricted from accepting the offer of deserters or absentees to return to military control unless the United States is directly responsible for the presence of the Marine in that country. The Marine will normally be advised and assisted to report at his/her own expense to a U.S. military installation within the U.S. or overseas. Unless the Marines are citizens of the country in which assistance is requested, they will be reported to the appropriate authorities of the country with a view toward deportation. When the Marine departs or is deported, arrangements will be made to have the Marine taken into custody upon arrival in a territory where U.S. military officers have the authority to apprehend.

5. Stragglers Orders

a. Stragglers orders will be issued to absentees directing their assignment as set forth in paragraph 5010.3. Figure 5-4 may be used as a guide to facilitate the processing of stragglers orders. **Contact CMC (PSL) at commercial (703) 614-3248/3376 (DSN 224) prior to issuing stragglers orders. CMC (PSL) will make the final determination in questionable cases. Marines who meet any of the following criteria will not be issued stragglers orders:**

(1) They are in violation of a previously issued set of stragglers orders;

(2) They are escaped prisoners;

(3) They indicate that they will not comply with stragglers orders;

(4) A law enforcement agent requests that they be returned under guard;

(5) The Marine Corps representative assuming physical custody determines that they will not comply with the stragglers orders;

(6) They have previously been apprehended by civil or military authorities for unauthorized absence;

(7) They have serious military charges pending at their parent command; or

(8) They have been classified by competent authority as dangerous or escape risks.

b. In NO case will an absentee be issued a Government transportation request (GTR) in conjunction with stragglers orders if the Marine has sufficient funds to defray the cost of travel. If it is necessary to issue a GTR in conjunction with stragglers orders, note on the GTR "good for destination only, least costly service and mode of transportation is to be used." The GTR will be annotated to expire within 2 days after the date of issuance to the absentee. Stragglers orders travel for absentees is to be charged to appropriation 17X1105.2702/OC-11/BCN12691/AAAN067443/TT21 /PAAOOOOOO/CC71130 (add last digit of current FY where "X" appears). Stragglers orders appropriations will be prepared in accordance with MCO P7300.8_, Marine Corps Financial Accounting Manual. Marines in transit on permanent change of station orders (PCSO) will be issued stragglers orders by endorsement to their original orders using appropriation data from the PCSO if the UA is less than 31 days.

c. Commands issuing stragglers orders will make travel reservations for the absentee and direct the absentee to report to the appropriate transportation terminal no later than 2 hour prior to departure time.

d. Distribution of stragglers orders:

(1) Forward an authenticated copy of the stragglers orders, signed by the Marine, to the joining command. This copy will be used by the joining command to publish a DD Form 616.

(2) Forward an authenticated copy of the stragglers orders, signed by the Marine, to CMC (PSL).

(3) If a GTR is issued, forward the original and two copies of DD Form 139 (Pay Adjustment Authorization) with a copy of the travel orders and transportation endorsement promptly to DFAS (CTAR), 1500 E. 95th St., Kansas City, MO 64197-0001. An acknowledged copy of the DD Form 139, GTR/meal ticket, travel orders and transportation endorsement will also be forwarded to CG (Code 470), Marine Corps Logistics Base, 814 Radford Blvd., Albany, GA 31704-5001.

(4) Give the signed original to the Marine.

(5) Place a signed duplicate original with the Marine's receiving endorsement in the issuing unit files. If the Marine fails to comply with the orders, this duplicate original may be required as proof at a subsequent disciplinary proceeding.

e. Absentees apprehended by civil authorities are generally

transported under guard. However in certain cases absentees may qualify for stragglers orders. This determination will be made by CMC (PSL), who will then coordinate with the civil authorities and issue stragglers orders and/or an electronic transportation ticket for the Marine to proceed to the joining command.

f. Failure to Comply with Stragglers Orders. The commander to whom the Marine has been directed to report will join the Marine by unit diary as of the date/time reported as returned to military control on the stragglers orders; drop the Marine to desertion as of 0001 the day following the reporting date; and publish a new DD Form 553. NOTE: In the remarks section of the DD Form 553 write "CAUTION: Subject violated stragglers orders. Request guards; do not release on own recognizance." If the SRB/OQR is not held, the commander will request it, by message, from the Marine's former command or from CMC (PSL), as appropriate. If the SRB/OQR is missing or in the possession of the Marine, the commander will request a copy of the Marine's OMPF from CMC (MMSB-10) and prepare a temporary service record per MCO P1070.12_, IRAM.

g. Dangerous Absentees/Deserters. Absentees and deserters may be reported as dangerous by any commander, the immediate family, any law enforcement agency, or any member of the medical profession. It is imperative that absentees and deserters not be issued stragglers orders if they are reported as dangerous by law enforcement officers at the time of apprehension. Absentees and deserters classified as dangerous to themselves or to the general public, will be returned to the joining command under guard and evaluated by the commanding officer or the officer in charge of the joining command to determine the appropriateness of continuing such "dangerous" classification.

(1) "Dangerous" behavior includes, but is not limited to, current violent behavior or a history of violent crime, suicidal, irrational or erratic behavior, hard drug usage, or sales of any narcotic or other dangerous drugs.

(2) To facilitate the identification of Marines who may be dangerous to themselves or the general public, commanding officers will ensure that classification information and appropriate cautionary statements are included in the remarks section of the DD Form 553.

(3) If, subsequent to publication of the DD Form 553, information is received which indicates that the deserter is dangerous, the command receiving the information will notify CMC (PSL), who will take appropriate action. If a copy of the DD Form 553 is not held, advise CMC (PSL), by priority message, of the circumstances for reclassification. CMC (PSL) will make the appropriate changes to the DD Form 553 and redistribute it.

h. Stragglers Orders - Weekly Reports. On a weekly basis, commands issuing stragglers orders will prepare a message report of

stragglers orders issued (Report Symbol MC-5800-04, figure 5-5). Distribution will be: CMC (PSL), joining commands, and former commands for absentees reassigned. Upon receipt of the weekly stragglers report, joining commands will prepare and distribute a DD Form 616 for each absentee who complied with the stragglers orders for whom a DD Form 553 had previously been prepared and distributed. For absentees who failed to comply, the joining command will take action as outlined in paragraph 5010.5f.

6. Return of Absentee to the Command. Upon transport of the absentee/deserter by cross country chasers, CMC (PSL) will release a transport under guard message to the appropriate unit or major command. That unit/command will join the individual from absentee/deserter status, and prepare and distribute DD Form 616 based upon the time and date of return to military control contained in the message.

a. Instructions for Joining Commands. Upon return of an absentee, the commander will take the following actions:

(1) Join the Marine by unit diary from desertion or report a "from UA," as appropriate, per MCO P1080.40_, MCTFSPRIM. If a Marine is joined after EAS, a determination must be made as to whether the Marine will be returned to a full duty status or will merely be retained in the service for disciplinary action (see DoD Financial Management Regulation, Volume 7A for a definition of full duty status).

(2) Make appropriate entries in the Marine's SRB per MCO P1070.12_, IRAM. In the event the SRB is not held, request by message that either the former command or CMC (PSL), as appropriate, forward the SRB. If the SRB/OQR has been lost, request a copy of the Marine's OMPF from CMC (MMSB-10) and prepare a temporary service record per MCO P1070.12_, IRAM.

(3) Upon receipt of documentation (e.g., an official death certificate) verifying the death of a Marine absent 180 days or less, the command from which the Marine absented him/herself will join the Marine from desertion as of 2359 one day prior to date of death, and report the death on unit diary on the effective date, per MCO P1080.40_, MCTFSPRIM. Questionable cases will be referred to CMC (PSL) for determination. For Marines absent more than 180 days, CMC (PSL) will effect the required unit diary entries.

(4) If a DD Form 553 has been published, distribute a DD Form 616 to the addressees of the DD Form 553. The signed original of the DD Form 616 will be forwarded to CMC (PSL). Ensure that a DD Form 616 reports both the date and time of return to military control or death. See Figure 5-11 for instructions on completing the DD Form 616.

b. Confinement of Absentees Returned Under Guard. Absentees

returned under guard will remain in custody until the commander determines whether, under the circumstances, pretrial confinement is appropriate. Confinement should be distinguished from custody. Custody is restraint which is imposed by apprehension and which may be, but is not necessarily, physical. Custody may be imposed by anyone authorized to apprehend (see R.C.M. 302(b), MCM) and may continue until a proper authority under R.C.M. 304(b) is notified and takes action. Thus, a person who has been apprehended could be physically restrained, but this would not be pretrial confinement in the sense of this rule until a person authorized to do so under R.C.M. 304(b) directed confinement. The commander must be notified immediately upon the absentee's return, and within 24 hours must decide whether continued confinement is appropriate. A written memorandum justifying pretrial confinement must be prepared and signed by the commanding officer within 72 hours of the absentee's return, and forwarded to the Initial Review Officer (IRO). If the commander determines that pretrial confinement should continue, the IRO will conduct a hearing within 7 days of the absentee's return to review the reasons for confinement and whether it should continue. Pretrial confinement may only be imposed in accordance with R.C.M. 305, MCM. Such restraint shall not be imposed for an absentee pending NJP or summary court-martial. In arriving at this decision, the commander should carefully consider the Marine's previous UA history, the circumstances of return to military control and the Marine's apparent and expressed willingness to comply with a lesser form of restraint.

5011. ESCAPED PRISONERS

1. An escape by a prisoner is a deliberate absence from the place of arrest, confinement, or from a guard.

2. As soon as it is known that a prisoner has escaped, the commander of the correctional facility, or unit commander will:

a. Activate the local escape bill as required by paragraph 4407 of SECNAVINST 1640.9_.

b. Notify the escapee's immediate commanding officer.

c. Immediately notify the DIP via telephone with a message to follow the next working day.

d. Publish a DD Form 553 and immediately forward the signed original by the most expeditious means to the DIP (Report Symbol MC-5800-02). Pending receipt of the signed original, a facsimile copy of the DD Form 553 is acceptable for the DIP to enter the Marine into the NCIC. The circumstances of the escape will be documented in the remarks section of the DD Form 553.

3. The immediate commanding officer of an escapee will:

a. As soon as possible, notify the armed forces police activities

in the area and local and State police agencies. Give a complete description of the escapee, all significant facts regarding the time, place, and circumstances of the escape, and the names and addresses of relatives, friends, or places under the jurisdiction of such police, to which the escapee might go.

b. Make appropriate entries on the unit diary per MCO P1080.40_, MCTFSPRIM, and make appropriate entries on pages 3 and 12 of the prisoner's service record per MCO P1070.12_, IRAM.

4. In cases of convicted prisoners being transferred, the commander of the transferring activity will be considered the prisoner's commander until the prisoner has been delivered to the destination or until otherwise notified by higher authority. When a prisoner escapes while en route to another activity, the guard will immediately notify the prisoner's commander by telephone or message giving the necessary information so that the commander may proceed as prescribed in paragraph 5011.3.

5012. PROCEDURE WHEN ABSENTEES AND DESERTERS OF OTHER SERVICES COME INTO THE CUSTODY OF THE MARINE CORPS

1. Commanders of Marine Corps activities will comply with this paragraph when members of other branches of the armed forces in the following categories report, surrender, or are delivered:

a. Unauthorized absentees.

b. Personnel on leave who are without funds and who request transportation.

2. When absentees of other services report, surrender, or are delivered to a Marine Corps activity, the commander will take the following action:

a. Contact the appropriate service Deserter Information Point. A confirmation of the individual's status and a disposition may be needed in these cases.

(1) US Army: USAEREC, United States Army, Deserter Information Point (UDADIP), 8899 East 56th Street, Indianapolis, IN 46249-5301, (317) 510-3711.

(2) US Navy: Navy Absentee Collection and Information Center (NACIC), 2834 Greenbay Road, North Chicago, IL 60064, (847) 688-2106.

(3) US Air Force: Headquarters AF Personnel Center (DPWCM), 550 C Street West, Suite 14, Randolph AFB, TX 78150-4716, (210) 566-3752.

(4) US Coast Guard: CGIS, 4200 WILSON BOULEVARD, STE 740 ARLINGTON, VA 22203-1800, (202) 493-6600.

5013. REMOVAL OF THE MARK OF DESERTION

1. The mark of desertion is the administrative declaration entry on page 3 of the SRB. Commanding officers and officers in charge shall remove, as erroneous, the mark of desertion of any Marine who was declared a deserter but who subsequently has been:

a. Punished by NJP for unauthorized absence only.

b. Referred to trial for the offense of UA only.

c. Tried and convicted of UA only.

d. Tried and acquitted.

e. Determined, pursuant to R.C.M. 706, MCM, or as a result of approved medical disability proceedings, to have been mentally incompetent at the time of the absence.

f. Determined by CMC (MRC), as designated by SecNav pursuant to MCO P3040.4_, MARCORCASPROCMAN, to be declared missing as defined in the Missing Persons Act, 37 U.S.C. § 551-558.

g. Determined to have been dropped to desertion because of an administrative error.

2. When the mark of desertion is removed for reasons outlined in paragraph 5013.1d, 1f, or 1g, and a DD Form 553 has been published, the command will so inform all addressees listed on the DD Form 553 and request that the DD Form 553 be returned or destroyed. In addition, delete as erroneous the entries on pages 3 and 12 of the SRB. Refer to MCO P1070.12_, IRAM, concerning removal of the conduct mark of "0" resulting from the declaration of desertion.

3. All other cases regarding the removal of the mark of desertion, when removal is recommended, will be referred to CMC (PSL) for decision. In the absence of a clear showing that a mark of desertion was erroneously entered, the entry will not be removed. Removal of a mark of desertion is not necessary prior to discharge.

4. The mark of desertion shall be removed, as soon as possible, after the determination that the entry was erroneous. The removal of the mark of desertion will be reported to the disbursing officer carrying the pay accounts of the Marine so that the member may be credited with any monies due on the date of the reported desertion entry. This is accomplished by forwarding a copy of the DD Form 616 with an entry signed by the commanding officer, giving the reason the mark of desertion was removed in the remarks section. A copy of the DD Form 616 so annotated will be forwarded to CMC (PSL) if the original DD Form 616 was not so annotated.

5. Instructions for removal of the mark of desertion on pages 3 and 12 of the SRB are contained in MCO P1070.12_, IRAM. MCO P1080.40_, MCTFSPRIM, and MCO P1070.12_, IRAM, contain instructions for removal of the conduct mark of "0" and other conduct and duty proficiency markings reported as a result of the declaration of desertion.

5014. DELIVERY OF MARINES TO CIVIL AUTHORITIES AND MARINES WITH PENDING CIVIL CHARGES

1. The JAG Manual, Chapter VI, prescribes the procedure for delivery or refusal of delivery of Marines to civil authorities. Refer to JAGMAN, Section 0610 for reporting requirements relating to refusal of delivery to civil authorities.

2. No assurance will be given to civil authorities that any particular Marine will be retained in or discharged from the service. If the local authorities contact a military installation directly, that installation will notify CMC (PSL) of the absentee's name, location, point of contact, whether or not civil charges are pending, and circumstances of detainment (whether surrendered or apprehended).

3. If civil charges are pending, CMC (PSL) will forward message traffic to the Marine Corps activity nearest the place of detention directing establishment of liaison with civil authorities per the provisions of paragraph 5015.

4. Upon notification that an absentee or deserter has surrendered and is considered a risk or unusual case, or has been apprehended by the local authority and verified as an absentee or deserter, with NO civil charges pending, cross country chasers will be dispatched by CMC (PSL).

5. Marine Corps commands will accept custody of Marines with pending civil charges when they are released on bond or on their own recognizance only after advising civil authorities that the Marine must be returned to the parent command, and that while the Marine Corps cannot guarantee the Marine's presence for trial, the member will be given the opportunity to appear in court if requirements of the service so permit.

6. When Marine absentees and deserters are released on bond, on their personal recognizance, or on a work release program, and they are not restricted to the court's jurisdiction, action will be taken in accordance with paragraph 5014.3. Marines who are not absentees or deserters will be issued orders to return to their parent command, unless classified as dangerous under paragraph 5010.5g. In cases where the conditions are that the Marine remain in the State or County under the court's jurisdiction, CMC (PSL and MMEA-86A) will be notified to coordinate assignment of the Marine to the nearest appropriate Marine Corps activity for accountability while under such restrictions.

7. The nearest Marine Corps activity receiving information that civil charges have been brought against a Marine absentee or deserter will file a military detainer using the format in figure 5-6. Forward a naval message to the Marine's parent command and CMC (PSL) that includes the date, time, and place of arrest; place of confinement; charges pending; prospective date of trial; and status of the court proceedings, e.g., pending grand jury hearing, etc. (See also figure 5-7.) In the event civil authorities bring charges against the Marine after custody has been accepted, paragraph 5014.1 applies.

8. Marine absentees against whom civil charges are pending who have surrendered to or have been apprehended by civil authorities, and who have not been released from custody, will remain on the rolls of their parent organization. Deserters will be assigned by CMC (PSL) per paragraph 5010.3 and Table 5-1. Marines on orders to or members of OCONUS commands will be reassigned to a CONUS command per paragraph 5010.4 and Table 5-1 pending resolution of the civil charges.

9. When Marines are confined by foreign authorities in connection with criminal charges, the Marine's command will promptly notify CMC (PSL) by message, with a copy to the Judge Advocate General of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400 (see figure 5-8). Periodic message updates will be submitted by the Marine's command when there is any change in the status of the case, e.g., rescheduled court dates, changes in the place of confinement, completion of trial (report the findings and sentence of the court). (See figure 5-9) In addition to this reporting requirement, unit commanders must also comply with any/all other local reporting requirements (i.e. under applicable SOFA USFJ/MCBJ regulations).

5015. ADMINISTRATION OF MARINES DETAINED BY CIVIL_AUTHORITIES (DOMESTIC OR FOREIGN)

1. The nearest Marine Corps activity receiving information that a Marine (including absentees and deserters) has been apprehended by civil authorities and has civil charges pending will take the following actions:

a. Establish liaison with civil authorities. File a military detainer using the format of figure 5-6. Send a message to the Marine's parent command and CMC (PSL) providing the information contained in paragraph 5014.7.

b. Maintain liaison with civil authorities in order to accomplish the following:

(1) Inform CMC (PSL) and the Marine's parent command by message of:

(a) Any change in the date of trial or continuance;

(b) Any change in the civil charges;

(c) Any action by a grand jury;

(d) Any other change of status including movement to another confinement facility, release on bond, or release on own recognizance; or,

(e) Completion of sentence.

(2) In the event the Marine is released on bond or on own recognizance, the Marine Corps activity having cognizance will advise the civil authorities that regulations do not provide for retention by such activity pending further civil determination and that the Marine will be returned to the parent organization. Civil authorities will be further advised that the Marine will be given the opportunity to return, at own expense, to stand trial, providing the exigencies of the service so allow.

(3) Upon release of the Marine on bond or on own recognizance, without restriction to court's jurisdiction, the activity having cognizance will issue the Marine stragglers orders or transport by cross country chasers, as appropriate, per paragraph 5010.

c. Upon conclusion of the civil court action, the following will be accomplished:

(1) Report the results by message to CMC (PSL) and the Marine's parent command in the event a Marine is:

(a) Convicted by civil authorities (foreign or domestic); or action is taken which is equivalent to a finding of guilty of an offense for which a punitive discharge would be authorized for the same or a closely related offense under the UCMJ; sentenced by civil authorities to confinement for 6 months or more without regard to suspension or probation; or convicted by civil authorities of an offense which involves moral turpitude (IF THE OFFENSE IS NOT LISTED IN PART IV, MCM, 2002 Edition, OR IS NOT CLOSELY RELATED TO AN OFFENSE LISTED THEREIN, THE MAXIMUM PUNISHMENT AUTHORIZED BY THE U.S. CODE APPLIES); or

(b) Adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or receives punishment in any way as the result of an offense involving moral turpitude.

(2) A copy of the court order or order of commitment, or the certificate of the judge, or the clerk of the court, listing the charge(s) of which the Marine was convicted, the sentence adjudged and the disposition of the appeal, if one is made, or a certification that no appeal was made, will be forwarded to the Marine's commanding officer and CMC (MMSB-20) for filing in the Marine's OMPF. Where available, a copy of the arresting officer's report and/or a copy of the pre-sentence report of the probation officer will be forwarded.

Extreme care must be taken to ensure that the particular offense(s) of which the Marine was convicted by civil authorities and the circumstances of their commission are clearly and specifically identified and described so that the maximum permissible penalty under the UCMJ (or U.S. Code) can be determined. In making this determination, neither the name nor label attached to an offense, nor the characterization of the nature of the crime (e.g., a crime involving moral turpitude, a felony or misdemeanor), by civil authorities is controlling.

(3) As used in paragraph 5015.1c(1)(a), the term "convicted (or a conviction) by civil authorities" includes not only final convictions by civil courts of record, but all final determinations by civil authorities (including those made by a magistrate, a justice of the peace, a municipal court, or other inferior courts) of criminality on the part of a Marine and those cases in which civil authorities have adjudged a Marine a juvenile delinquent, a youthful offender or a wayward minor. It is immaterial whether, as a result thereof, probation is imposed; a sentence is executed; execution of sentence is deferred, delayed or suspended; or, by local law, custom or procedure, charges are dismissed or expunged from civil courts' records after payment of a fine, completion of a term in jail or penitentiary, or completion of a period of probation, as these do not change the initial characterization of the conviction.

(4) If the Marine is confined as a result of sentencing by a civil court for such crimes, a request for or waiver of rights will immediately be obtained from the Marine (see MCO P1900.16_, MARCORSEPMAN), together with a physical examination (see Manual of the Medical Department) and both will be forwarded to the Marine's parent command for appropriate action along with the court documents. It is imperative that this action be taken by the local commander as soon as possible after the conviction has been entered by the court and without waiting for a request from the Marine's parent command.

2. Commanders must ensure that discharge action contemplated for convicted Marines is completed as soon as possible after the conviction. See MCO P1900.16_, MARCORSEPMAN, paragraphs 6210.6 and 6210.7.

a. In the event a Marine is confined as a result of sentencing by civil court, and the parent command does not receive both the request for or waiver of rights and a copy of the physical examination within 14 days of such judgment, the commander will, by message, immediately request the local unit assuming cognizance of the Marine's case to take action in accordance with paragraph 5015.1c.

b. In cases where the discharge action is not completed within 30 days of conviction, the commander will advise CMC (PSL) on a monthly basis of the status of the discharge proceedings or the reason discharge proceedings will not be initiated.

c. Upon discharging a Marine serving sentence in a civil confinement facility, the commander will send a message to the

confinement facility, the commander who assumed cognizance of the case on the local level, and CMC (PSL), reporting the unit diary number and date of discharge and requesting that the military detainer be canceled.

d. For Marines detained by civil authorities on civil charges whose prior service reflects a pattern of misconduct, see MCO P1900.16_, MARCORSEPMAN.

5016. WORK RELEASE PROGRAM. No commander will lift a military detainer to allow a Marine to participate in a work release program. If local or State laws permit the release of a prisoner to a work release program, although the detainer remains in effect, the Marine Corps will interpose no objection to the Marine being so released, providing the Marine remains under the jurisdiction of the correctional institution. In such cases, the Marine will be considered to remain in the hands of civil authorities serving sentence the same as if the Marine remained incarcerated.

5017. RESERVISTS ORDERED TO INVOLUNTARY ACTIVE DUTY WHO DO NOT REPORT

1. Per MCO P1080.40_, MCTFSPRIM, Reservists who fail to report for assignment to involuntary active duty must be:

a. Reassessed into MCTFS; and

b. Joined and dropped to desertion in the SRB/OQR and MCTFS by the inspector-instructor/4th MAW site commander, as appropriate.

c. On the 31st day of absence publish a DD Form 553, fax to CMC (PSL).

2. When an individual is no longer in a deserter status, provide CMC (PSL) with a copy of the DD Form 616 per paragraph 5010.6.

3. For additional information regarding processing Reservists to involuntary active duty status, refer to MCO P1001R.1_, MCRAMM.

Rule	If Marines absent themselves from:	and the Marines:	The Marines will be:
1	CONUS commands not listed in Rule 2	Have been absent 180 days or less	returned to the command from which they originally absented themselves (see Note 1).
		are male and have been absent over 180 days	assigned to the command listed in Note 2 which is closest to the point of surrender or apprehension and based on their location (i.e. East/West of the Mississippi.
		are female and have been absent over 180 days	assigned to MCAS Miramar
2	any of the following commands: MATSGs, Marine barracks, Marine Corps security force companies, Marine detachments, formal schools and inter-service schools, commands within the 4th Marine Aircraft Wing, 4thFSSG, or 4th Marine Division, and separate (independent) Marine commands which do not have general court-martial convening authority	Have been absent 30 days or less and have not been dropped to desertion	returned to the unit from which they originally absented themselves.
		Have been absent over 30 days or have been dropped to desertion	assigned to the command listed in Note 2 which is closest to the point of surrender or apprehension and based on their location (i.e. East/West of the Mississippi.
3	WESTPAC commands, to include Hawaii, not listed in Rule 2	are returned to military control while in WESTPAC	assigned as directed by CMC (PSL) (see Note 3).
		are returned to military control in CONUS after being absent 180 days or less	assigned as directed by CMC (PSL) (see Note 3).
		are male and are returned to military control in CONUS after being absent more than 180 days	assigned to the command listed in Note 2 which is closest to the point of surrender or apprehension, and based on their location (i.e. East/West of Mississippi).
		are female and are returned to military control in CONUS after being absent more than 180 days	assigned to MCAS Miramar
4	any command not covered by rules 1 through 3	Have been absent 30 days or less and have not been dropped to desertion	returned to the command from which they originally absented themselves
		Have been absent over 30 days or have been dropped to desertion	assigned as directed by CMC (PSL) (see Note 3).

Note 1. Students absent from SOI, MCSSS, and MCES less than 180 days will be returned directly to the respective school. Those students absent greater than 180 days will be assigned per Note 2. **Note 2.** MCB Quantico; MCB Camp Lejeune; MCB Camp Pendleton; MCAS Cherry Point; MCAS Miramar; MCRD/ERR Parris Island; MCRD/WRR San Diego. **Note 3**. CMC (PSL) will assign deserters to the command listed in Note 2 nearest the point of apprehension or surrender compatible with the Marine's MOS (ground or aviation).

Table 5-1.--Rules for Assignment Upon Return to Military Control.

Unit Heading

5800
Code
Date

Mr. and Mrs. John R. Brown
1234 5th Street
Anytown, VA 54321-0001

Dear Mr. and Mrs. Brown:

I regret to inform you that your (son) (daughter) (other relationship), (grade, name, USMC) has been absent from this organization since (date). If you know where (he) (she) is, please tell (him) (her) to return. Absence without leave is a serious military offense that becomes more serious as the length of absence increases.

If (grade, last name) remains absent more than 30 days, (he) (she) will be declared a deserter and we will ask civil law enforcement authorities to assist in (his) (her) apprehension. (Pay allotments) (and) (family members' eligibility for military medical care, commissary privileges, or other benefits) may also be terminated. (*Only include the second sentence if the addressee is receiving allotments or is entitled to benefits.*)

I don't want your (son) (daughter) (other relationship) to become a fugitive. If (he) (she) doesn't have enough money to cover the trip to this command, or if you need further assistance, please call the Marine Corps representative at (703) 696-2031 or 696-2032, or call the Marine Corps representative listed in your phone book under "United States Government." If I can be of any assistance in this matter, please call me at (phone number), or write me at (address).

Sincerely,

JOHN J. MARINE
Captain, U.S. Marine Corps
Commanding Officer

(Separate letters should be sent to the parents and spouse (if any), with copies being provided to the Marine Corps unit with administrative cognizance nearest the absentee's home of record.)

Figure 5-l.-Sample Format for a Letter of Notification to Next of Kin.

STATEMENT TO ACCOMPLISH PAYMENT OF REWARD OR EXPENSES FOR RETURN OF ABSENTEE
NAVMC 11145 (6-84) (EF)
SN: 0109-LF-065-5400

SEE REVERSE FOR PREPARATION INSTRUCTIONS

PRIVACY ACT STATEMENT (5 U.S.C. 552a)

AUTHORITY: Title 10, U.S. Code, Sections 807 and 808 and Annual DOD Appropriations Act.
PRINCIPAL PURPOSE (S): To document facts concerning apprehension of military absentee.
ROUTINE USES: To substantiate payment of rewards for apprehension; to document delivery of absentee into military custody; to reimburse for actual expenses with regard to apprehension and detention.

DATE

1. **IDENTIFICATION OF ABSENTEE**

a. NAME AND GRADE	b. SSN	c. ORGANIZATION AND STATION

2. **ARREST AND DELIVERY**

a. DATE OF ARREST	b. PLACE OF ARREST	c. PLACE OF DELIVERY TO MILITARY CONTROL (if applicable)

3. **ITEMIZED STATEMENT OF ACTUAL EXPENSES INCURRED BY CLAIMANT**
(Execute this statement when reimbursement of expenses is claimed. Do not execute item 4, below)

DATE	ITEM	AMOUNT

These expenses were incurred in connection with apprehension and delivery of the absentee identified in item 1, above.

TOTAL $

SIGNATURE OF CLAIMANT	TITLE	ADDRESS (Street, City, State and Zip Code)

4. **STATEMENT BY CLAIMANT OF APPREHENSION, DETENTION, DELIVERY, AND RECEIPT OF NOTICE**
(Execute this statement when reward is claimed. Do not execute item 3, above)

I, or the agency I represent, effected the apprehension and detention or delivery of the absentee identified in item 1, above, and (check one, below)

☐ APPREHENSION AND DETENTION (Held by local authority) ($50.00)

☐ APPREHENSION AND DELIVERY TO MILITARY AUTHORITY ($75.00)

SIGNATURE OF CLAIMANT	TITLE	ADDRESS (Street, City, State and Zip Code)

5. **STATEMENT BY RESPONSIBLE MILITARY AUTHORITY AS TO DELIVERY OF ABSENTEE**

a. DATE OF DELIVERY	b. PERSON OR AGENCY EFFECTING DELIVERY	c. DELIVERY WAS MADE TO (Check one) ☐ MILITARY FACILITY ☐ MILITARY CONTROL

Delivery of the absentee identified in item 1, above, actually was made to military facility or military control.

TYPED NAME AND GRADE OF MILITARY AUTHORITY	SIGNATURE OF MILITARY AUTHORITY

Designed Using FormFlow 2.15, HQMC/ARAE, May 98

Figure 5-2.--Statement to Accomplish Payment of Reward or Expenses for Return of Absentee.

INSTRUCTIONS FOR PREPARATION:

1. Identification of Absentee:
   a. Name (self explanatory)
   b. SSN (self explanatory)
   c. Organization and Station (USMC or Absentee's Command)

2. Arrest and Delivery
   a. Date of Arrest (self explanatory)
   b. Place of Arrest (self Explanatory)
   c. Place of Delivery to Military Control (if applicable)

3. Itemized Statement of Actual Expenses Incurred by Claimant; (Paid in lieu of reward and not to exceed $75.00)
   - Only Item No. 3 or Item No. 4 to be completed, not both.
   - Actual expenses include expense for food while in custody of claimant.
   - Transportation expenses (No of miles x 17c per mile) for privately owned vehicle.
   - Other (miscellaneous expense incurred while in custody).

4. Statement by Claimant of Apprehension, Detention, Delivery:
   - Only Item No. 3 or Item No. 4 to be completed, not both.
   - Only one box to be checked in item no. 4.

5. Statement by Responsible Military Authority as to Delivery of Absentee:
   a. Date of Delivery (to military control or military facility)
   b. Person or Agency Effecting Delivery
   c. Delivery was made to (check one)

Figure 5-2.--Statement to Accomplish Payment of Reward or Expenses for Return of Absentee--Continued.

VOUCHER FOR DISBURSEMENT AND/OR COLLECTION - NAVCOMPT FORM 2277 (8PT) (REV. 8-88)

Page 1 of Pages

1. Purpose DISB. ☐ COLLECT ☐	2. Date	3. Reference Document No.	4. Bill Number	5. Voucher No.

6. FROM:
Officer in Charge
Marine Corps Absentee Collection Unit
Headquarters, U.S. Marine Corps (POS-40)
Washington, DC 20380

7. PAID BY:
CHECK NO.

8. TO:
(Sheriff/Police Dept. Address)

9. ARTICLES, SERVICES OR ITEMS

A. INVOICE OR ORDER NO.	B. DATE OF DELIVERY/SERVICES	C. DESCRIPTION (REMITTER, EXPLANATION, DETAILS, ETC.)	D. QUANTITY	E. UNIT PRICE COST	E. UNIT PRICE PER	F. AMOUNT
Auth IAW NAVSO P1000; par	Date	REWARD FOR THE APPREHENSION OF MILITARY DESERTER Name: SSN: Date Apprehended: Certified to be Correct: (CCPET)				

G. DISCOUNT TERMS | H. TOTAL

10. TYPE OF PAYMENT OR BILL: COMPLETE ☐ PARTIAL ☐ FINAL ☐ PROGRESS ☐ ADVANCE ☐

11. ACCOUNTING CLASSIFICATION TO BE CREDITED (COLLECTION)

A. ACRN	B. APPROPRIATION	C. SUB-HEAD	D. OBJ. CLASS	E. BUREAU CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT (U.S. CURRENCY ONLY)
	(BLANK)									

12. DEDUCTIONS

A. ACRN	B. TRANSPORTATION	C. DISCOUNT	D. TAX	E. RESERVE	F. MISCELLANEOUS	G. TOTAL FOR ACRN (U.S. CURRENCY ONLY)
	(BLANK)					

H. CURRENCY: EXCHANGE RATE = $1.00 I. TOTAL DEDUCTIONS

13. ACCOUNTING CLASSIFICATION TO BE CHARGED (DISBURSEMENT)

A. ACRN	B. APPROPRIATION	C. SUB-HEAD	D. OBJ. CLASS	E. BUREAU CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT (U.S. CURRENCY ONLY)
AA	1741105	2760	025	51690	0	067443	2D	000000	000000071165	$50.00

L. TOTAL NET AMOUNT TO BE PAID (BLOCK 9-H MINUS BLOCK 12-1)

14. INSPECTION REPORT NOS: | 15. GOV'T B/L NOS:

16. APPROVED
BY _____
_____ TITLE _____
(DATE)

17. CERTIFIED
BY _____
_____ TITLE _____
(DATE)

18. PAYMENT RECEIVED:
PAYEE-
PER-
TITLE-

Designed using FormFlow 2.15, HQMC/ARAE, Feb 88

Figure 5-3.--Sample Voucher for Disbursement and/or Collection.

Unit Heading

1320
Code
Date

From: (Title of Officer Issuing Orders)
To: (Grade, Name, SSN/MOS, Service Component)

Subj: STRAGGLERS ORDERS

Ref: (a) MCO P5800.16_ (LEGADMINMAN)
(b) CMC WASHDC _____ (use this as a reference ONLY when specific instructions are received to issue orders)

1. Having surrendered to this (activity) (organization) at (hour) on (date), you will proceed in accordance with references (a) and (b), as routed below, to (name and location of post, camp or station) and upon arrival will report to (designation of specific command to which the individual is to report) by (time/date).

ITINERARY OF TRAVEL (show all stops, transfers, and names of transportation facilities)

LOCATION	HOUR/DATE	(NAME OF TRANSPORTATION CO)
Depart:		
Arrive:		
Depart:		
Arrive:		

OR

1. Having (been apprehended by) (surrendered to) (military authority first taking custody) at (hour) on (date) and subsequently delivered to this (activity) (organization) at (hour) on (date), you will proceed, as routed below, etc.

(*This form to be used when an individual is taken into custody by civil or military authorities and subsequently delivered to activity or command which issued the orders.*)

2. You are advised that deviation from this schedule constitutes disobedience of orders, a serious military offense. Should you not maintain the schedule because of sickness, accident, or disaster, you will advise CMC (PSL) by collect telegram and request instructions.

3. By authenticated copy of these orders, your commander is requested to declare you a deserter in the event you fail to report immediately

Figure 5-4.--Sample Format for Stragglers Orders.

Subj: STRAGGLERS ORDERS

upon completion of the travel directed herein, and to publish a warrant for your arrest (DD Form 553).

4. TravCharAppn: 17X1105.2702/OC-11/BCN12691/AAAN 067443/TT21/ PAAOOOOOO/CC71130

(Add last digit of current FY where "X" appears)

5. GTR(s) _____ issued in connection with these orders. You will report to the passenger transportation officer at your destination to report all unused tickets, transportation requests, and meal ticket requests, and change of service to a lesser value than authorized by the tickets. Cost to the Government for GTR(s) issued: $_____.

I. M. COMMANDING

Date

FIRST ENDORSEMENT

1. I received the original of these orders at _____ on _____ at
(hour) (date)
_____. These orders have been read and
(location)
explained to me and I understand them. I certify that I do not have sufficient funds to defray the cost of my travel.

_____
(Signature - sign all copies)

Distribution:
Signed original to absentee or deserter
Signed copy to CMC (PSL)
Signed copy to commander named in paragraph 1 of the orders
Signed duplicate original to file
DFAS (CTAR), 1500 E. 95th St., Kansas City, MO 64197-0001 (plus original and 2 copies of DD Form 139);
CG (Code 470), Marine Corps Logistics Base, 814 Radford Blvd., Albany, GA 31704-5001 (plus one copy of DD Form 139, GTR/meal ticket).

Figure 5-4.--Sample Format for Stragglers Orders--Continued.

UNCLASSIFIED

01 01

FROM: COGNIZANT COMMAND

TO: JOINING COMMANDS

INFO: CMC WASHINGTON DC//PSL//

UNCLAS//N01610//

SUBJ: RPT OF RET OF ABSENTEE ISS STRAGO FOR WEEK OF _____ (RPT SYMBOL MC-5800-04)

A. LEGADMINMAN, CHAP 5

1. IAW THE REF, FOL MARINES RMC AND WERE DIR TO RPT TO INDC COMDS BY THE INDC DATE/TIME:

	ABS FR	RMC	RPT BY	
GRADE/NAME/SSN	RUC/MCC	DATE/TIME	RPT TO	DATE/TIME

2. IAW PARA 5010.5H OF THE REF, COMDRS ARE REQ TO JOIN AND DROP TO DES ABSENTEES LISTED HEREON WHO HAVE FAILED TO RPT.
BT

Figure 5-5.--Weekly Report of Stragglers Orders Issued.

Unit Heading

5800
Code
Date

Chief of Police/Sheriff
2345 6th Street
Anytown, VA 54321-0002

Dear Sir or Madam:

This is in regard to Private I. M. Outahere, U.S. Marine Corps, who is currently confined in your facility.

Private Outahere is a Marine Corps absentee. Upon his release from confinement, I request that he be released only to the custody of a Marine Corps or other military representative. The authority to detain Private Outahere for the military is contained in the provisions of the Interstate Agreement on Detainers Act, Public Law Number 91-538, Sections 1-8 (Codified at 18 U.S.C. § App) 1970.
(*The above paragraph only applies if the Marine is serving a sentence awarded by a civil court.*)

OR

This is in regard to Private I. M. Outahere, U.S. Marine Corps, who is currently being detained in your facility.

Private Outahere is a Marine Corps absentee. I request that he be released only to the custody of a Marine Corps or other military representative, in the event he is released on his own recognizance or posts bond.

The authority to detain Private Outahere for the military is the DD Form 553, Absentee Wanted by the Armed Forces.
(*The above paragraph applies in all other cases.*)

USE THE FOLLOWING STATEMENTS, AS APPROPRIATE

Private Outahere has been classified by the Marine Corps as an escape risk, or dangerous to himself or the general public, so he must be returned to his parent organization by prisoner escort.

If you can advise me in writing or by telephone when the Marine Corps can assume physical custody of Private Outahere, I will arrange to have prisoner escorts report to your confinement facility for return to his parent organization.

Figure 5-6.--Sample Format for Military Detainer Letter.

USE THE FOLLOWING STATEMENTS, AS APPROPRIATE

Upon notification from a member of your staff that Private Outahere is available for return to military control, I will issue him orders to return to his parent organization. If it is your opinion that he should he considered an escape risk, or dangerous to himself or the general public, please have a member of your staff contact my office and prisoner escorts will return him to his parent organization. For your information, the Marine Corps may not have jurisdiction to try Private Outahere in a military court for the offenses he may have committed in your community. If I can be of any further assistance to you in this matter, please do not hesitate to write me or call me at (Area Code)_____.

Sincerely,

I. M. COMMANDING
Captain, U.S. Marine Corps
Commanding Officer

Figure 5-6.--Sample Format for Military Detainer Letter--Continued.

UNCLASSIFIED

01 01

FROM: COGNIZANT UNIT

TO: PARENT COMMAND-COMMANDING GENERAL

INFO: CMC WASHINGTON DC//PSL//MMEA

UNCLAS//N01610//

SUBJ: IHCA UPDATE NR _____*CASE OF PVT I. M. OUTAHERE 123 45 6789/0000 USMC

A. LEGADMINMAN, CHAP 5

B. DTG (ORIG IHCA MSG)

1. IAW REF A, FOL ADD INFO IS PROVIDED PERTAINING TO REF B:

A. LIST ANY CH OF STATUS; I.E., COURT DATE ESTAB AS _____; SNM BOUND OVER TO GRAND JURY _____; COURT ADJOURNED UNTIL _____; ADD CHGS _____ FILED; SNM CONV OF _____; SENT TO _____ YRS; REL DATE _____; CONFD _____(PLACE)_____.

2. SNM REL BY CIVIL AUTH ON (DATE/TIME). REQ GDS.

OR

2. SNM REL BY CIVIL AUTH ON (DATE/TIME). ISSUED STRAGO PARENT COMD. TO RPT YOUR COMD NLT (DATE/TIME).

*NOTE: INITIAL MSG IS CONSIDERED RPT NO 1. ALL ADDITIONAL MESSAGES PERTAINING TO THE SAME CASE/INDIVIDUAL WILL BE NUMBERED SEQUENTIALLY.

Figure 5-7.--Sample Format for Message Update Report of Marine Detained by Civil Authorities.

UNCLASSIFIED

01 01

FROM: MARINE'S COMMAND

TO: CMC WASHINGTON DC//PSL

INFO: NAVY JAG ALEXANDRIA VA

UNCLAS//N01610//

SUBJ: IHFA CASE OF PVT I. M. OUTAHERE 123 45 6789/0000 USMC

A. SECNAVINST 5820.4

B. LEGADMINMAN CHAP 5

1. IAW REFS A AND B, FOL ADD INFO PVD. SNM WAS APPRND BY _____ AT _____ ON _____. CHG WITH _____. RTD _____.

A. SNM CURR CNFD AT (NAME OR JAIL/CITY/COUNTRY).

B. COURT DATE SKED _____/NOT SKED.

2. (APPROPRIATE COMMAND) HAS ASSUMED COGNIZANCE OF CASE ON LOCAL LEVEL IAW REF A.

FURTHER INFO WILL BE FORWARDED AS RECEIVED.

BT

Figure 5-8.--Sample Format for Message Report of Marine Detained by Foreign Authorities.

UNCLASSIFIED

01 01

FROM: COGNIZANT COMMAND

TO: CMC WASHINGTON DC//PSL

INFO: NAVY JAG ALEXANDRIA VA

UNCLAS//N01610//

SUBJ: IHFA UPDATE NR _____ CASE OF PVT I. M. OUTAHERE 123 45 6789/0000 USMC

A. LEGADMINMAN, CHAP 5

B. DTG (ORIG IHFA MSG)

1. IAW REF A, FOL ADD INFO IS PROVIDED PERTAINING TO REF B:

A. LIST ANY CH OF STATUS; I.E., COURT DATE ESTAB AS _____. SNM INDICTED _____. COURT ADJOURNED UNTIL _____. ADD CHGS _____ FILED. SNM CONV OF _____. SENT TO _____ YRS. REL DATE _____. CONFD _____(PLACE)_____.

2. SNM REL BY FOREIGN AUTH ON (DATE/TIME). CHGS PENDING. SNM PLACED ON LEGAL HOLD.

OR

2. SNM REL BY FOREIGN AUTH ON (DATE/TIME). CHGS DISMISSED.

OR

2. SNM REL BY FOREIGN AUTH ON (DATE/TIME). FOREIGN JURISDICTION WAIVED.

BT

*NOTE: INITIAL MSG IS CONSIDERED RPT NR 1. ALL ADDITIONAL MESSAGES PERTAINING TO THE SAME CASE/INDIVIDUAL WILL BE NUMBERED SEQUENTIALLY.

Figure 5-9.--Sample Format for Message Update Report of Marine Detained by Foreign Authorities.

INSTRUCTIONS FOR COMPLETING DD FORM 553 NOV 2002

Block 1. DATE PREPARED. Enter date of preparation, year/month/day; e.g., 1991/12/28.

Block 2. TO. One of three major entries is usually entered in this block.

OQR/SRB of Marine (absentee),

CMC (PSL) ,or

See Distribution List.

Block 3. FROM. Enter the absentee's organization or activity and place from which absent. If UA occurs while in transit, list old and new units in Block 19, Remarks. (Source of information: SRB/OQR, page 3.)

Block 4. DISTRIBUTION

1. Forward the original DD Form 553 to CMC (PSL) as soon as possible. Immediately fax the DD Form 553 to PSL. DD Form 553s forwarded with missing/incomplete information will be returned to the parent command via their chain of command for corrective action.

2. Copy to document side of the service record.

3. Copy to primary next of kin. (Source of information: RED in the SRB/OQR).

4. Copy to units assigned reporting and prisoner escort responsibilities. (See MCO 5800.10_).

Block 5. ABSENTEE IDENTIFICATION

5a. NAME. Enter the last name, first name, and middle initial, in that sequence.

5b. GRADE/RANK/RATE. Enter the military grade/rate (name and code) of the named absentee; for example; Private, Airman Basic, Seaman Recruit, E-1; Corporal, E-4; etc.

5c. SEX. Enter the absentee's sex; i.e., Male (M), or Female (F).

5d. RACE. Enter the absentee's race code as contained in the MCTFS. See MCO P1080.20_, MCTFSCODESMAN.

Figure 5-10.--Instructions for Completing DD Form 553.

5e. ETHNICITY. Enter the absentee’s ethnicity code per MCTFS.

5f. PLACE OF BIRTH. Enter the city, state, and country, in that order. (Source of information: DD Form 4, NAVMC 763, or DD Form 1966 in SRB/OQR).

5g. DATE OF BIRTH. Enter the year, month, and day, in that order. (Source of information: DD Form 4, NAVMC 763, or DD Form 1966 in SRB/OQR).

5h. HEIGHT. Enter the absentee's height in inches; e.g., 72". (Source of information: Medical Record).

5i. WEIGHT. Enter the absentee's weight in pounds. (Source of information: Medical Record).

5j. EYE COLOR. Enter the color of the absentee's eyes; i.e., blue (BL), green (GR), brown (BR), or hazel (HA). (Source of information: Medical Record).

5k. HAIR COLOR. Enter the color of the absentee's hair; i.e., brown (BR), black (BK), blonde (BL), gray (GR), red (RD), bald (BA), or white (WH). (Source of information: Medical Record).

5l. DIP CONTROL NO. (Deserter Information Point Control Number). Enter the appropriate sequential DIP Control Number assigned by the using agency to account for cases entered into the National Crime Information Center (NCIC) of the FBI. If unknown, leave blank.

5m. SERVICE. Enter the code for the absentee's branch of service; i.e., Army (A), Navy (N), Marine Corps (M), or Air Force (F).

5n. SOCIAL SECURITY NO. Enter the absentee's SSN. (Source of information: DD Form 4, NAVMC 763, or DD Form 1966 in the SRB/OQR).

5o. CITIZENSHIP. Enter the country of which the absentee is a citizen. (Source of information: NAVMC 763 or DD Form 1966 in the SRB/OQR).

5p. MARITAL STATUS. Enter the code for the absentee's marital status; i.e., Married (M), Single (S), or Divorced (D).

5q. MILITARY OCCUPATION. Enter the absentee's primary MOS and title. (Source of information; SRB/OQR, page 8a).

5r. CIVILIAN OCCUPATION. Enter the absentee's prior civilian employment. Enter specific job skills. (Source of information: SRB/OQR, page 8a).

Figure 5-10. -Instructions for Completing DD Form 553--Continued.

5s. PERMANENT RESIDENCE ADDRESS. Enter the absentee's permanent residence address, including ZIP code.

Block 6. CURRENT ENLISTMENT

6a. DATE. Enter the most recent date of entry the absentee signed an enlistment or appointment contract, i.e., year/month/day (1995/10/25).

6b. PLACE. Enter the most recent location the absentee signed an enlistment or appointment contract, e.g., MCAS Camp Pendleton, CA.

Block 7. ENTRY INTO CURRENT PERIOD OF SERVICE

7a. DATE. Enter the date of entry that the absentee physically reported for active duty on current enlistment, i.e., year/month/day (1995/10/25). If the date is the same as the date entered in 6a, enter "Same as 6a." (Source of information: DD Form 4, NAVMC 763, DD Form 1966, and/or page 3 in the SRB/OQR).

7b. PLACE. Enter the place of entry that the absentee physically reported for active duty on current enlistment, e.g., MCAS Camp Pendleton, CA. If the place is the same as the date entered in 6b, enter "Same as 6b." (Source of information: DD Form 4, NAVMC 763, DD Form 1966, and/or page 3 in the SRB/OQR).

Block 8. ATTACH PHOTOGRAPH. If available.

Block 9. TIME OF ABSENCE

9a. DATE. Enter the date that the unauthorized absence commenced ensuring that it is the same date that was ran on the unit diary, i.e., year/month/day (1995/10/25).

9b. HOUR. Enter the hour the absence commenced, per the unit diary, i.e., 1830.

Block 10. ADMINISTRATIVE DATE OF DESERTION. Enter the date on which the absentee was administratively classified a deserter (31 day) i.e., year/month/day (1995/11/24).

Block 11. ESCAPED OR SENTENCED PRISONER. Enter the status of absentee by marking the appropriate box. For escaped or sentenced prisoners, indicate in the appropriate space the specific offense (civil or military) of which convicted. If military, include reference to the appropriate punitive article of the UCMJ.

Block 12. DISCHARGE STATUS. Enter the absentee's discharge status by marking the appropriate box.

Figure 5-10.--Instructions for Completing DD Form 553--Continued.

Block 13a-c. OPERATOR'S LICENSE. This block is self-explanatory. Information for this block will normally come from the Provost Marshall Office. If information is unknown, enter the word "unknown."

Block 14a-d. VEHICLE LICENSE. See Block 13 comment.

Block 15a-f. VEHICLE. See Block 13 comment.

Block 16. RELATIVES AND/OR PERSONS KNOWN BY ABSENTEE. Enter the absentee's nearest relatives, friends, and other persons most likely to have some knowledge or indication of the absentee's whereabouts. Enter their names, addresses, and ZIP codes. List additional names in Block 19, Remarks. (Source of information: RED in SRB/OQR, interview, etc.).

Block 17. CERTIFICATION (May be used by military and civil law enforcement authorities to obtain search or arrest warrants). Complete each line carefully. The information displayed in this block will likely be the determining factor in whether the request for a warrant by law enforcement authorities is approved or denied. Complete every block in this part with precision and detail.

Block 18. COMMANDING OFFICER

18a. TYPED NAME. Enter the last name, first name, and middle initial, in that sequence.

18b. GRADE. Enter the military grade of the named commanding officer or designee, e.g., Colonel (Col), Lieutenant Colonel (LtCol), Major (Maj), etc.

18c. TITLE. Self-explanatory.

18d. ORGANIZATION AND INSTALLATION. Self-explanatory.

18e. SIGNATURE. All copies must contain an original signature.

18f. DATE SIGNED. Enter the date, i.e., year/month/day (1995/11/25).

Block 19. REMARKS

1. List peculiar habits and traits of character, unusual mannerisms and speech, peculiarities in appearance, clothing worn, aliases (names), marks and scars, tattoos, facial characteristics, complexion, posture, build, other SSNs used by the individual, or other data that may assist in identification.

Figure 5-10.--Instructions for Completing DD Form 553--Continued.

2. If the Marine is considered an escape risk, pending charges or under investigation for violations of the UCMJ other than unauthorized absence or desertion, dangerous to him/herself or others, a violator of previous stragglers orders, or drug or alcohol addicted, appropriate cautionary statements will be placed in the remarks section of the DD Form 553 in CAPITAL LETTERS.

3. WESTPAC units with FPO and APO addresses will include a comment to the effect that the absentee deserted in CONUS or in a specific foreign country.

4. When a Marine is dropped to desertion prior to the 30th day of UA, the unit will indicate the reason for dropping the Marine to desertion.

5. Use letter-size bond paper for continuation of remarks or blocks on the front of the form.

Figure 5-10.--Instructions for Completing DD Form 553--Continued.

INSTRUCTIONS FOR COMPLETING DD FORM 616

Block 1. DISTRIBUTION. Same as the DD Form 553. (Exception: when the pay record is at DFAS, Kansas City, a copy of this form will be sent to DFAS.)

Block 2. NAME. Enter the service member's last name, first name, and middle initial.

Block 3. SERVICE. Enter the code for the service member's branch of service; i.e., Marine Corps (M), Army (A), Navy (N), or Air Force (F].

Block 4. SOCIAL SECURITY NO. Enter the service member's social security number.

Block 5. GRADE OR RATE. Enter the military grade and pay grade of the service member.

Block 6. FORMER ABSENTEE STATUS

6a. Former Status. Enter an "x" in the appropriate block to indicate if the service member was an escaped or sentenced prisoner, absentee, or deserter.

6b. Date and Hour Absence Began. Enter the date and hour the absence began.

6c. Organization and Installation From Which Absent. Enter the complete mailing address of the organization the service member was absent from.

Block 7. CIRCUMSTANCES OF ABSENTEE'S RETURN

7a. Mode of Return. Place an "x" in the block to indicate how the service member was returned to military control.

7b. Indicate Authorities to Whom Absentee Surrendered or by Whom Apprehended. Place an "x" in the appropriate block to indicate who the service member surrendered to or was apprehended by.

7c. Place of Initial Return. Enter where the service member initially returned.

7d. Date and Hour of Initial Return. Enter the date and hour of initial return.

Figure 5-l1.--Instructions for Completing DD Form 616.

7e. Required Action. Enter the required action by placing an "x" in the appropriate box.

7f. Military Organization and Installation or Civil Location. Enter the complete mailing address of the service member’s location.

7g. Date Returned to Military Control. Enter the date the service member returned to military control.

Block 8. DISPOSITION OF ABSENTEE

8a. Action by Military Authorities. Place an "x" in the appropriate box.

8b. To. Enter the complete organizational address of the command that is in charge of the absentee (joining command).

8c. Cost of Transportation. Enter the amount of the ticket purchased to return the absentee back to the unit.

Block 9. REMARKS. This block is used to place any remarks that the command deems necessary. You should include in the remarks section the location of the individual's service, pay, and health records.

Block 10. AUTHORIZING OFFICIAL.

10a. TYPED NAME. Type the last name, first name, and middle initial of the person who will be signing this form.

10b. GRADE. Type the grade of the officer signing this form.

10c. TITLE. Type the official title of the officer signing this form.

10d. ORGANIZATION. Type the organization of the officer signing this form.

10e. SIGNATURE. Signature of officer indicated in block 10a. An original signature is required on all copies.

10f. DATE. Enter the date the form is being published (signed) in this block.

Figure 5-l1.--Instructions for Completing DD Form 616--Continued.

LEGADMINMAN

CHAPTER 6

VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP)

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CHAPTER 6

VICTIM AND WITNESS ASSISTANCE PROGRAM

6000. PURPOSE. This chapter sets forth procedures and responsibilities under the Victim and Witness Assistance Program (VWAP) established by DoD Directive 1030.1 and SECNAVINST 5800.11_, and defines the policies, responsibilities, and procedures for Marine Corps compliance with DoD Instruction 1030.2 and the aforementioned directives.

6001. DEFINITIONS

1. Central Repository. A headquarters office, designated by the Secretary of the Navy to serve as a clearinghouse of information on confinee status and to collect and report data on the delivery of victim and witness assistance, including notification of confinee status changes. The central repository for the Marine Corps is CMC (PSL)(Corrections).

2. Component Responsible Official. Person designated by the CMC primarily responsible for coordinating, implementing, and managing the Victim and Witness Assistance Program. The component responsible official is the Staff Judge Advocate to CMC.

3. Investigative and Law Enforcement Personnel. The term "investigative and law enforcement personnel" includes NCIS, CID, military police, installation security, and other individuals with authority to conduct a criminal investigation or inquiry into a crime. For the purposes of this chapter, this term does not include individuals appointed to conduct investigations under chapters II, III, IV, VIII and XII of JAGINST 5800.7_ (JAGMAN).

4. Service Providers. Those personnel responsible for providing support services including, but not by way of limitation: Marine and Family Services (MFS) personnel (counselors and victim advocates), chaplains, legal assistance attorneys, and health care professionals. This term does not include investigative and law enforcement personnel nor does it include trial counsel or staff judge advocates.

5. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DoD Components. Such individuals shall include, but are not limited to, the following:

a. Military members and their family members.

b. When stationed outside the continental United States, DoD

civilian employees and contractors, and their family members. This applies to services not available to DoD civilian employees and contractors and their family members in stateside locations, such as medical care in military medical facilities.

c. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following (in order of precedence): a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court or the component responsible official, or designee.

d. The term "victim" does not include an individual involved in the crime as a perpetrator or accomplice, even though the individual may be one of the representatives described above.

e. For a victim that is an institutional entity, an authorized representative of the entity. Federal departments and State and local agencies, as entities, are not eligible for services available to individual victims.

6. Victim and Witness Assistance Coordinator (VWAC). The command's primary point of contact for victim and witness assistance matters.

7. Victim and Witness Liaison Officer (VWLO). The installation commander's representative responsible for the coordination of victim and witness assistance efforts aboard the installation.

8. Witness. A person who has information or evidence about a crime, and provides that knowledge to a DoD component about an offense in the investigative jurisdiction of a DoD component. When the witness is a minor, that term includes a family member or legal guardian. The term witness does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice.

6002. BACKGROUND

1. Between 1982 and 1990, the U.S. Congress enacted a series of laws designed to inform crime victims and witnesses of their rights and position in the criminal justice system. The last of the series, the Victims' Rights and Restitution Act of 1990, imposed a duty upon departments and agencies of the U.S. engaged in law enforcement and criminal justice functions to ensure that crime victims are provided specific rights and services.

2. Victims and witnesses of crime normally suffer some adverse impact from the crime. The VWAP is designed to minimize the effects of crime, and to help victims and witnesses understand and meaningfully participate in the military justice system. The VWAP ensures that Marine Corps personnel are trained to provide appropriate information, referrals, and services.

3. Victims of sexual assault often require assistance beyond the

information and referrals required under the VWAP. SECNAVINST 1752.4, Sexual Assault Prevention and Response and MCO 1752.5, Sexual Assault Prevention and Response Programs, provide additional guidance, training requirements, responsibilities, and assistance programs for sexual assault victims.

6003. APPLICABILITY. The provisions of this chapter apply to all Marine Corps personnel, and Navy personnel attached to Marine Corps units, engaged in detecting, investigating, or prosecuting crime, and to personnel assisting crime victims and witnesses. This chapter is not limited to criminal offenses prosecuted at courts-martial. Crime victims and witnesses do not forfeit their status when offenses are referred to nonjudicial punishment or administrative separation proceedings.

6004. POLICY. It is Marine Corps policy that:

1. Marines shall treat all victims and witnesses of crime with dignity and respect.

2. The necessary role of crime victims and witnesses in the criminal justice process should be protected. Humanitarian and practical concerns demand that Marine Corps authorities responsible for effective functioning of the criminal justice system consider the needs of victims and witnesses participating in command investigations or disciplinary proceedings within the cognizance of Marine Corps activities. Responsible authorities must mitigate, within the means of available resources and in accordance with applicable law, the physical, psychological, and financial hardships suffered by crime victims and witnesses and make all reasonable efforts to foster their cooperation in the criminal justice process.

3. The Marine Corps will do all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the Constitutional rights of an accused. Particular attention should be paid to victims of serious, violent crime, including child abuse, domestic violence, and sexual misconduct.

4. Law enforcement, criminal investigation, and legal personnel directly engaged in the detection, investigation, or prosecution of crimes, shall ensure victims are accorded their rights. Crime victims have the following rights:

a. To be treated with fairness and with respect for the victim’s dignity and privacy.

b. To be reasonably protected from the accused.

c. To be notified of court-martial proceedings and any scheduling changes which will affect their appearance at court-martial.

d. To be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

e. To confer with trial counsel

f. To receive available restitution.

g. To be notified of the apprehension of an accused, the initial appearance of an accused before a military judge, the release of the accused pending court-martial, and trial proceedings (including entry of guilty pleas).

h. To receive information about the conviction, sentence, confinement, and release of the accused.

5. Court-martial convening authorities and clemency and parole boards shall consider making restitution to the victim a condition of pretrial agreements, sentence reduction, clemency, and parole. They may also consider victim statements on the impact of the crime.

6. In cases of sexual assault, the specialized concerns and issues surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. SecNavInst 1752.4, Sexual Assault Prevention and Response, expressly prohibits releasing the names of any victim of sexual assault to the media without the consent of the victim.

7. Under MCO 1752.5, the Sexual Assault Prevention and Response Office (SAPRO) has oversight over all programs and services provided to sexual assault victims. Coordination with SAPRO is necessary prior to creating new, or modifying existing, programs or procedures designed to benefit sexual assault victims.

8. This chapter is not intended to, and does not, create any entitlement, cause of action, or defense in favor of any person arising out of the failure to provide the assistance outlined in this chapter. No limitations are placed on the lawful prerogatives of the Marine Corps or its officials.

6005. PROGRAM OVERVIEW. VWAP is a multi-disciplinary model designed to identify and assist crime victims and witnesses through the criminal justice process beginning with the initial report of a crime and continuing through the investigation, prosecution, sentencing, confinement, and release of an offender.

1. Installation commanders are responsible for implementing VWAP and shall be the central points of contact for VWAP issues on aboard the installation.

2. Unit commanders, commanding officers, and OICs are responsible for

ensuring that victims and witnesses in their commands are afforded their rights and are informed of the status of a criminal case through final disposition. Commanders are advised that crime victims and witnesses identified in command preliminary inquiries or investigations must be afforded the rights provided in this chapter.

3. All disciplines (e.g., law enforcement, security, criminal investigations, convening authorities, legal, corrections) are responsible for ensuring a smooth transition of victim and witness assistance at all stages of the criminal justice process.

4. Service providers are responsible for providing available support services to victims and witnesses and, when appropriate, shall provide referrals to community-based services.

6006. RESPONSIBILITIES

1. The SJA to CMC shall:

a. Ensure victim and witness assistance materials are available for law enforcement personnel, judge advocates serving as trial counsel, and legal assistance attorneys.

b. Receive and compile the reports required by DoD Instruction 1030.2 and prepare the annual report (DD Form 2706) for submission to the Assistant Secretary of the Navy (Manpower and Reserve Affairs).

c. Provide a representative for the DoD VWAP Council established by DoDI 1030.2.

2. Service Providers shall understand and support VWAP and know the rights of victims and witnesses under VWAP as provided herein.

3. Marine and Family Services (MFS) shall:

a. Inform crime victims and witnesses about VWAP when they receive counseling, treatment, or advice, if such information has not already been provided.

b. Inform victims of spousal or intrafamilial abuse of the benefits provided under "Transitional Compensation for Abused Family Members." The purpose of this program is to help ease the transition from military to civilian life for spouses and/or dependent children of a service member who is separated from active duty as a result of a family abuse offense. The spouse and/or family should be referred to the member’s commanding officer for assistance with completion of DD Form 2698 "Application for Transitional Compensation."

c. Encourage victims of spousal or intrafamilial abuse by service members to contact the local legal assistance office for additional information on their rights and other benefits that they may be entitled to receive.

d. As appropriate, inform crime victims of State crime compensation funds that may be available to reimburse victims for certain expenses incurred as a result of the crime.

e. Know the VWAP points of contact at your installation. The VWLO is responsible for maintaining a directory of VWAP points of contact for their respective installation.

f. Appoint by name and in writing, a representative to the local Victim and Witness Assistance Council.

4. CMC (Code PSL (Corrections). CMC(PSL), as the designated Marine Corps Central Repository, will serve as a clearinghouse of information on prisoner status and to collect and report data on the delivery of victim and witness assistance including notification of prisoner status changes. CMC (PSL) will:

a. Ensure a DD Form 2704 is received for every confinee, including those confined pursuant to summary court-martial.

b. Establish a victim and witness notification program in each brig and detention facility. VWAP procedures will apply to all prisoners confined in Marine Corps brig facilities, regardless of service.

c. Ensure that upon receipt of a DD Form 2704 that indicates a victim or witness has requested notification, establish a prisoner adjunct file to track notification of status changes. Any DD Form 2704 indicating a victim or witness does not desire notification will be filed at the brig where the prisoner is confined. The DD forms and adjunct files will be destroyed 2 years from the date the prisoner is released from confinement or parole, whichever is later.

d. Ensure that the corrections database accurately reflects all prisoners enrolled in the notification program.

e. Verify compliance with notification requirements prior to directing any prisoner transfer or transport per MCO 1640.3_.

f. Review the notification program and, when appropriate, direct termination from the notification program of victims or witnesses that brig personnel are unable to contact after reasonable efforts. For prisoners of other services, forward the request to the appropriate service central repository.

g. Inform brigs of any victim or witness requests received at CMC(PSL) indicating a desire to be terminated from the notification program.

h. Submit reports per paragraph 6007.

5. Installation Commanders are designated the Local Responsible Officials pursuant to SECNAVINST 5800.11_ and DoD Directive 1030.1. Installation commanders are responsible for implementing and maintaining VWAP on their respective installation. They must coordinate with the commanding officers of tenant activities to insure that all victim- and witness- related services and requirements are fulfilled. Additionally, installation commanders shall:

a. Ensure close coordination between local VWAP representatives from NCIS, LSSS or law center, military police, commanding officers, medical facilities, MFS, corrections facilities, and chaplains.

b. Appoint in writing, by name, title, duty address, and telephone number, a Victim and Witness Liaison Officer (VWLO). VWLO responsibilities are outlined in this chapter. Ensure all VWAP representatives onboard the installation are provided the VWLO's name and phone number.

c. Establish a local Victim and Witness Assistance Council to coordinate the efforts to provide a comprehensive assistance program and comply with VWAP notification and reporting requirements. Installation commanders shall designate the VWLO as council chairperson. VWLO responsibilities are outlined in paragraph 6010. At a minimum, the local council shall consist of a PMO, legal, chaplain, and MFS representative. When available, representation from the local confinement facility is encouraged.

d. Ensure processes are in place to maintain data on the number of victims and witnesses who received DD Forms 2701-2704 from personnel listed in this chapter.

e. Construct and maintain, with the assistance of the local MFS, a directory of programs, services, and crime victim compensation funds available within their geographic area, both military and civilian, to which a victim or witness may be referred. When appropriate, enter into Memoranda of Agreement, after consultation of the base staff judge advocate, with civilian agencies to ensure victims and witnesses are provided required services.

f. Ensure that victims and witnesses are receiving the information and services as required under VWAP.

g. Ensure VWAP is included as an item of interest during regular inspections.

h. Appoint, in writing, by name, title, duty address, and telephone number, a local law enforcement representative to serve as the investigative and law enforcement victim witness assistance coordinator (VWAC), and ensure the law enforcement VWAC meets the responsibilities delineated in paragraph 6011.

i. When a confinement facility is located onboard the installation, appoint, in writing, by name, title, duty address, and telephone number, a confinement facility representative to serve as the corrections victim witness assistance coordinator (VWAC) and representative to the local Victim and Witness Assistance Council.

6. Unit Commanders, Commanding Officers, and Officers in Charge are responsible for understanding and aggressively supporting VWAP and ensuring compliance with this chapter. VWAP rights, responsibilities, and procedures apply to deployed units to the extent reasonably possible. Every commander (battalion/squadron level and above) shall appoint, in writing, a Victim and Witness Assistance Coordinator (VWAC). The appointment letter shall include the VWAC's name, title, duty address, and duty telephone number VWAC responsibilities are set forth in para 6011. A copy of this appointment letter will be provided to the VWLO. In addition to a commander's responsibility to support and assist victims and witnesses of crime, commanders have specific reporting requirements as follows:

a. Sexual Assault Incidents. MCO 1752.5 requires commanders to report all alleged sexual assaults to the Provost Marshal Office. See MCO 1752.5 for additional responsibilities in responding to sexual assaults. In addition, commanders should consider reporting all serious incidents of a criminal nature via OPREP-3SIR (See MCO 5740.2_) in appropriate cases. Personnel reporting sexual assault incidents via OPREP-3 SIR need to be mindful of victim privacy and withhold victim identifying information to the maximum extent practical. The SJA to CMC shall be included as an addressee on these reports.

b. Sexual Harassment Incidents. As required by MCO P5354.1_, Equal Opportunity Manual, commanders shall submit a Discrimination and Sexual Harassment (DASH) report when a formal complaint of sexual harassment is filed and a Marine is the complainant or alleged offender. The command that receives the complaint is responsible for submitting the DASH report.

c. In cases of summary court-martial where confinement is adjudged and approved, commanders shall coordinate with a trial counsel for completion of DD Form 2704.

d. Military Protective Orders (MPOs). It is imperative that every appropriate effort be made to protect victims of violence or abuse from further harm. Accordingly, DoD has promulgated guidance on the issuance of MPOs.

(1) When Issued. Commanding officers shall issue MPOs when necessary to safeguard victims, quell disturbances, and maintain good order and discipline. It is DoD policy that DD Form 2873, Military Protective Order, shall be used to issue MPOs. The current version of DD For 2873 can be found at DoD Publications and Forms website: http://web1.whs.osd.mil/icdhome/forms.htm.

(2) Distribution and Retention. Commanders shall retain the original, completed DD Form 2873 in the service member's record. Commanders shall provide a signed DD Form 2873 to both the service member and protected person in accordance with the distribution list contained on the form. However, prior to providing the form, the commanding officer will ensure that personal information of both the service member and the protected person (i.e., home address, home phone number, social security number, date of birth) are not released to either party. The DD Form 2873 maintained in the service member's record shall be destroyed 6 months after the order expires.

7. Investigative and Law Enforcement Personnel shall:

a. Understand VWAP, provide crime victims and witnesses the information described in this chapter, and meet the following specific responsibilities:

(1) All law enforcement personnel must identify victims and witnesses of crimes and treat them with fairness and with respect for their dignity and privacy.

(2) Threat assessment. All law enforcement personnel have a continuing duty to take reasonable measures to protect victims and witnesses from further threat, harm, and intimidation. To that end investigative and law enforcement personnel shall make an immediate assessment of the situation and take action to minimize the threat to the victim or witness. Exercise care in discussing any protective measures that may be afforded the victim or witness to avoid creating unrealistic expectations concerning the level of protection available.

(3) The individual in charge of a criminal investigation will ensure that the victims and witnesses in the case are provided with a completed DD Form 2701 (Initial Information for Victims and Witnesses of Crime) and ensure that victims and witnesses understand the rights afforded under the law and this chapter. DD Form 2701 shall be completed by investigative and law enforcement personnel. The form shall include the name and telephone number of the investigator, the VWLO, and the cognizant command VWAC, and, when appropriate, a number to contact a victim advocate.. The home address and telephone number of victims and witnesses will not be included in investigative reports unless they are specifically pertinent (e.g., the crime scene is at the victim's home).

(4) Assist victims and witnesses, upon request, in contacting the persons responsible for providing the services and relief described in DD Form 2701. The MFS and VWLO are responsible for maintaining a directory of service and relief providers. Investigative and law enforcement personnel shall familiarize themselves with this directory and supply victims and witnesses with appropriate phone numbers and addresses. Further assistance in contacting the service providers should be rendered as necessary and appropriate.

(5) If requested, and to the extent that it will not interfere with the investigation, the individual in charge of the investigation will keep the victim apprised of the status of the investigation/inquiry.

(6) If requested, the individual in charge of the investigation shall promptly notify the victim/witness when a suspect is apprehended.

(7) Investigative and law enforcement personnel shall safeguard the victim's property held as evidence and shall assist in returning it as soon as possible.

(8) The VWLO is required to maintain a directory of command VWACs. Investigative and law enforcement personnel shall familiarize themselves with this directory and supply victims and witnesses with names and telephone numbers of the appropriate command VWACs. Further assistance in contacting the command VWAC should be rendered as is necessary and appropriate.

(9) Ensure that the total number of DD Form 2701 provided to victim and witnesses is reported to the VWLO not later than 15 January for preceding calendar year.

(10) Notification to VWAC

(a) Accused and victim are military members. The individual in charge of the investigation will provide the identity of the victim to both the accused's VWAC and the victim's VWAC.

(b) Only accused is a military member. The individual in charge of the investigation will provide the identity of the victim to the accused's VWAC.

(c) Only victim is a military member. The individual in charge of the investigation will provide the identity of the victim to the victim's VWAC.

8. LSSS and Law Centers. OICs of LSSS and Law Centers, and Staff/Senior Judge Advocates at installations not using the LSSS/Law Center concept, shall appoint, in writing and by name, a representative to the local Victim and Witness Assistance Council and provide a copy of the appointment letter to the VWLO. Additionally, they shall ensure trial counsel meet their responsibilities under VWAP as delineated in this chapter, including the following specific responsibilities:

a. After preferring charges. Once charges have been preferred, the trial counsel assigned to the case shall identify the victims and witnesses in the case and provide them with DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime) and determine their elections as to those rights. Trial counsel shall ensure that

victims and witnesses are provided information concerning their role in the criminal justice process, including what to expect from the system, what the system expects from them, the stages in the criminal justice process significant to a crime victim or witness, and the proper method for obtaining further information.

b. Victim Notification. When a victim has requested notification, trial counsel shall ensure, at the earliest possible convenience, the victim is advised of:

(1) The pretrial confinement status of the accused.

(2) The date charges were referred and the nature of the charges.

(3) The acceptance of a pretrial plea agreement.

(4) The scheduling of each court proceeding.

(5) The findings of the court-martial.

(6) The sentence adjudged.

(7) The convening authority's action concerning the court-martial findings and sentence.

c. Witness Notification. When a witness has requested notification, trial counsel shall ensure, at the earliest possible convenience that the witness is advised of:

(1) The acceptance of a plea.

(2) The findings of the court-martial.

(3) The sentence adjudged.

(4) The action of the convening authority as it may affect the sentence.

d. Victim's Views Concerning Pretrial Plea Negotiations. Victims have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as plea-bargaining. Trial counsel shall ensure victims are aware of their right to act in this advisory capacity. In those cases in which a victim has elected to act in such an advisory capacity, trial counsel shall ensure the victim's views concerning prosecution and plea negotiations are obtained and forwarded to the convening authority.

e. Rescheduling of Court-Martial Proceedings. Trial counsel shall ensure, as soon as possible, that all victims and witnesses who have been scheduled to attend criminal justice proceedings are notified of any schedule changes that may affect their appearances.

f. Separate Waiting Room. During the court-martial proceedings, trial counsel shall ensure, to the extent possible, that victims and prosecution witnesses are provided with a waiting area that is separate from, and out of the sight and hearing of, the accused and defense witnesses.

g. General Assistance at Trial. Trial counsel shall inform and assist victims and witnesses concerning the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

h. Notification of Employer. Upon request by the victim and/or witness, the trial counsel shall take reasonable steps to inform that person's employer of the reasons for absence from work due to court-martial.

i. Explanation to Creditors. When requested by a victim or witness, the trial counsel shall contact the creditor of a victim or witness who is subjected to serious financial strain caused by the crime, or by cooperation in the investigation or prosecution of an offense.

j. Victim's Property. When the trial counsel has possession of a victim's property, they shall safeguard the property of a victim held as evidence and shall return it as soon as possible.

k. Sentencing. Trial counsel shall inform victims of the opportunity to present evidence to the court at sentencing. In compliance with applicable law and regulations, the victim may submit a statement concerning the impact of the crime, including financial, social, psychological, and physical harm suffered by the victim.

l. Post-Trial Information. At the conclusion of a court-martial resulting in a conviction, trial counsel shall provide victims and witnesses with DD Form 2703 (Post-Trial Information for Victims and Witnesses) to convey basic information about the post-trial process.

m. Post-Trial Confinement Status of Accused. At the conclusion of every court-martial in which confinement is adjudged, including Summary Courts-Martial, trial counsel shall prepare DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status) with the assistance of the victim or witness (those who fear harm by the offender). Trial counsel shall ensure copies are provided to:

(1) The confinement facility;

(2) Victims/witnesses whose entitlement to receive information has been certified by trial counsel; and

(3) The responsible VWACs.

n. Maintain data on the number of victims and witnesses provided DD Forms 2702, 2703, and 2704.

8. All staff judge advocates will:

a. Comply with the reporting responsibilities in sexual assault cases as provided in MCO 1752.5.

b. Ensure that OPREP-3SIRs are submitted in appropriate cases. See paragraph 6006.6.

6007. VICTIM AND WITNESS ASSISTANCE PROGRAM REPORTING

1. SECNAVINST 5800.11_ and DoD Instruction 1030.2 require an annual report to the Under Secretary of Defense for Personnel and Readiness, via the Assistant Secretary of the Navy (ASN (M&RA)), concerning the assistance provided to victims and witnesses of crime. Not later than 1 March, CMC (JAM) shall forward to ASN (M&RA) a completed DD Form 2706 for data covering the preceding calendar year. In order to ensure timely submission of to ASN(M&RA), the following data must be maintained and forwarded to CMC (JAM) no later than 1 February each year (Report Control Symbol DD-5800-09 has been assigned to this report) for data covering the preceding year:

a. Installation Commanders shall report via DD Form 2706 the total number of victims and witnesses who received DD Form 2701; victims and witnesses who received DD Form 2702 and DD Form 2703; and victims and witnesses who elected via DD Form 2704 to be notified of changes in prisoner status.

b. CMC (PSL) shall report via DD Form 2706, by 1 February, the total number of victims and witnesses to whom Marine Corps brig personnel provided notice of prisoner status changes via DD Form 2705, and a cumulative total (as of 31 December) of each service’s prisoners for whom brigs must provide victim or witness notifications.

c. LSSS/Law Center OICs (SJAs in the absence of a LSSS/Law Center) shall maintain data on the number of victims and witnesses who received DD Form 2702 (Court-Martial Information For Victims and Witnesses of Crime) and DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime), and the number of victims and witnesses who elected their rights via DD Form 2704. By 15 January each year, submit to the Local Responsible Official, via the VWLO, DD Form 2706 with the total numbers of DD Forms 2702, 2703, and 2704 provided to victims and witnesses.

2. Commanding Officers of Correction Facilities shall submit a monthly report to each service central repository concerning the status of their service members confined in Marine Corps facilities. The report shall include:

a. Name, social security number.

b. Date of confinement (indicate whether a new confinement or transfer from another facility).

c. Date of admittance into the program and the number of victims or witness for each prisoner.

d. Location of the court-martial convening authority.

e. Number of all victims or witnesses notified (DD Form 2705 or telephonically) and the reason for notification for each prisoner status change during the month.

f. Information regarding unsuccessful attempts to contact a victim or witness who has previously requested notification.

g. Copies of any correspondence received from a victim or witness requesting termination from the notification program.

h. Minimum release date.

i. Parole eligibility date.

j. The cumulative total of the service's prisoners for whom brigs must make victim or witness notifications confined as of the last day of the reporting month.

6008. RESOURCES. The SJA to CMC maintains a website (http://sja.hqmc.usmc.mil/default_new.htm) on VWAP references, training materials, and helpful links to victim-related resources such as the DoD VWAP Council web page, http://www.defenselink.mil/vwac/, and the Department of Justice, Office for Victims of Crime web page, http://www.ojp.usdoj.gov/ovc/.

6009. FORMS. The DoD VWAP Council web page provided above contains all VWAP-related forms.

6010. VICTIM WITNESS LIAISON OFFICER (VWLO) RESPONSIBILITIES

1. VWLOs shall:

a. Ensure that each organization (battalion/squadron level and above) assigned to the installation, including tenant commands (battalion/squadron level and above) appoints a Victim Witness Assistance Coordinator (VWAC) by name and in writing.

b. Maintain a list of VWAP representatives from PMO, legal, MFS, and all VWACs (both organic and tenant) aboard the installation. Ensure copies of this list are made available to all VWACs and VWAP representatives.

c. Chair and conduct a VWAP council meeting at least quarterly to discuss VWAP-related issues.

d. In conjunction with MFS, maintain a directory of military and civilian programs and services providing counseling, treatment, and

other victim support within the geographic area of the installation.

e. Obtain and distribute relevant information to VWACs (both organic and tenant), including, where appropriate, VWAP-related training material and the directory of local programs and services.

f. In coordination with PMO, legal, and MFS ensure victims and witnesses are notified of their rights.

g. In coordination with PMO, ensure victims are provided the names, titles, duties, addresses, and telephone numbers of the appropriate VWAC involved in their case.

h. Assist, when appropriate, victims in exercising their rights and obtaining support.

i. Assist the installation commander in meeting VWAP reporting requirements.

j. Ensure that that issues surrounding the sensitive needs of victims of sexual assault are properly addressed in local VWAP Council meetings.

k. Ensure that deploying units receive appropriate VWAP training and VWAP material prior to deployment.

l. Ensure that CMC(JAM) is notified when a new VWLO is appointed.

6011. COMMAND VICTIM WITNESS ASSISTANCE COORDINATOR (VWAC) RESPONSIBILITIES

1. The VWAC responsibilities vary depending on the relationship of a victim or witness to the VWAC’s command. The VWAC shall:

a. Generally. Obtain and distribute VWAP materials and, at the discretion of the unit commander, provide VWAP training to the members of the command. In cases involving victims, witnesses, or accused from different commands, the VWACs for the respective commands may have overlapping duties and responsibilities. Coordination between VWACs is essential.

b. When the victim or witness is a member of VWAC’s command. Once the command is aware that one of their members is a victim or a witness, the VWAC shall ensure that the victim or witness has been advised of applicable rights by providing DD Form 2701 (Initial Information For Victims and Witnesses of Crime), if one has not already been provided. Additionally, the VWAC shall:

(1) Coordinate with the MFS to ensure the victim or witness receives, when appropriate, information concerning the availability of resources including information on compensation programs available to

victims of intra-familial abuse offenses when the offender is a service member;

(2) Assist the victim in obtaining necessary counseling;

(3) Maintain contact with all VWACs, and other VWAP personnel involved in the victim's or witness' case; and

(4) Assist the victim or witness as appropriate and necessary in the exercise of their rights. For cases pending judicial action, the trial counsel will provide notifications, assistance, and explanation of rights (as contained in DD Forms 2702, 2703, and 2704).

c. When the accused is a member of the VWAC's command. Once the command is aware that the accused is a member of the command, the VWAC shall identify the victim and, if available, witnesses. For those victims and witnesses from another command, notify the appropriate VWAC. If the victim or witnesses is from the accused's command, the VWAC for that command will provide the necessary assistance as provided above. Additionally, the VWAC shall:

(1) When necessary, notify the victim of the commander's decisions concerning prosecution, the nature of the charges, and the date charges are preferred. Typically, the trial counsel will provide this information and VWACs will contact the trial counsel prior to discussing this information with the victim or witness;

(2) When necessary, solicit and discuss the victim's views regarding appropriate disposition of the charges against the accused, particularly during pretrial plea negotiations. Typically, the trial counsel will solicit this information. VWACs will contact the trial counsel prior soliciting this information; and

d. Where VWAC's Command is the Convening Authority. After charges have been preferred, the VWAC shall:

(1) Ensure victims and witnesses have been provided the necessary notifications under VWAP. The VWAC must coordinate with PMO, legal, and VWACs of the victims' or witnesses' command.

(2) Confirm that the trial counsel assigned to the case has obtained the victim's views concerning plea negotiations and has forwarded that information to the convening authority;

(3) Confirm that the trial counsel has complied with the victim's request to be notified of the following:

(a) The date charges are referred and the nature of the charges;

(b) Acceptance of a pretrial agreement;

(c) The court-martial findings concerning guilt;

(d) The sentence adjudged; and

(e) The convening authority’s action on the findings and sentence of the court-martial.

e. If the accused is sentenced to confinement, including confinement as a result of summary court-martial, confirm that the trial counsel prepared a DD Form 2704 as provided herein prior to transporting the member to the confinement facility.

f. In pretrial confinement cases where the victim or witness has requested notification, notify that victim or witness of changes in the accused's pretrial confinement status.

CHAPTER 7

ADMINISTRATIVE PROCEDURES FOR PAROLEES

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CHAPTER 7

ADMINISTRATIVE PROCEDURES FOR PAROLEES

7000. SCOPE. This chapter sets forth procedures and administrative instructions relating to the processing of Marine Corps prisoners sent on parole. Detailed instructions concerning the legal procedures of parole are contained in SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems.

7001. PAROLE AUTHORIZATION. Authority to place a prisoner on parole will be given by the President, Naval Clemency and Parole Board prior to a member going on parole. A prisoner should be processed to a parole status in a timely and accurate manner upon receipt of the parole authorization.

7002. CONDITIONS OF PAROLE. Parole is considered a supervised form of confinement; not appellate leave. Prisoners on parole must continue serving their sentence except that they will serve their sentence in a civilian community, through the guidance and supervision of an officer of the Federal Probation Service. The Naval Clemency and Parole Board will determine an individual's parole conditions. However, all pre-release conditions of parole must be accomplished prior to releasing an individual on parole.

7003. PROCEDURES

1. Upon receipt of the parole authorization, the prisoner must understand the conditions of the parole agreement. The prisoner's signature must be witnessed and verified when signing the receiving endorsement on the parole agreement.

2. Commanders will ensure that all administrative procedures pertaining to the prisoner have been accomplished prior to parole. The commander will transfer the prisoner via unit diary in accordance with MCO P1080.40A (MCTFSPRIM). All records (service, health, dental, and pay) and a copy of the parole agreement must be forwarded to CMC (POS-40) in accordance with MCO P1070.12J (IRAM).

3. In the event a prisoner's discharge is approved and ordered executed before parole, the unit must report the discharge of a prisoner as prescribed in MCO P1080.40A (MCTFSPRIM). All records will be forwarded as above and will include all copies of discharge related documents.

7004. RELEASE FROM PAROLE

1. When a prisoner is released from parole, CMC (POS-40) will place the prisoner on appellate leave until discharge authority is received from the Court of Military Review.

2. If a prisoner was discharged prior to completion of parole, CMC (POS-40) will forward the records of the former prisoner per MCO P1070.12J (IRAM).

7005. PAROLE REVOCATION

1. Upon notification of parole revocation, the parolee is ordered to report to the brig from which released for re-confinement within 24 hours. The receiving brig must ensure that CMC (POS-40) is notified immediately via naval message if the parolee fails to report.

2. A parolee at large, whose parole has been terminated pursuant to SECNAVINST 5815.3H, or whose parole has been suspended or revoked (except those suspended without prejudice), will be considered the same as an escaped military prisoner whose return to military control is desired. Regulations pertaining to apprehension and return to military control of escaped military prisoners will apply. Flash wanted notices will be filed by the Federal Bureau of Investigation (FBI Form I-12).

CHAPTER 8

MANAGEMENT OF INVESTIGATIONS

8000. SCOPE. The provisions of this chapter provide guidance for managing investigations conducted by Marine Corps commands.

8001. TYPES OF INVESTIGATIONS. When an incident or mishap occurs, there may be several reasons, and separate requirements, to conduct an investigation. Among the reasons for conducting an investigation are to prevent similar incidents in the future and to obtain and preserve available evidence for use in litigation, claims, disciplinary, or adverse administrative actions. The following types of investigations may be required.

1. JAGMAN Investigations. Chapter II of the JAGMAN contains comprehensive guidance for conducting administrative investigations and provides content and sample documentation requirements for specific types of incidents. Section 0202 of the JAGMAN identifies other types of investigations, agencies responsible for conducting these investigations, their relationship to administrative investigations under Chapter II of the JAGMAN, and applicable references. The JAGMAN also provides guidance on the three types of JAGMAN investigations: command investigations, litigation-report investigations, and courts/boards of inquiry.

2. UCMJ Investigations. R.C.M. 303, MCM, 2002, requires immediate commanders to make or cause to be made a preliminary inquiry into allegations that a member of the command has committed an offense or offenses triable by court-martial. Commanders may conduct such inquiry personally, task a subordinate to conduct the inquiry, or seek assistance from law enforcement personnel (e.g., the Provost Marshal’s Office, Criminal Investigative Division, or Naval Criminal Investigative Service). If the only basis for an investigation is disciplinary action, a separate JAGMAN investigation should not be conducted.

3. NCIS Investigations. SECNAVINST 5520.3_ mandates that, within the DON, the Naval Criminal Investigative Service is primarily responsible for investigating suspected or alleged major criminal offenses, defined as those offenses punishable under the UCMJ (or similarly framed Federal, State, local, or foreign laws or regulations) by confinement for a term greater than 1 year. SJAs and command investigating officers must determine if NCIS is investigating the same incident and, if so, coordinate their efforts with NCIS to ensure their efforts do not compromise or otherwise impede the NCIS investigation.

4. Investigations into Alleged Security Violations. Pursuant to SECNAVINST 5520.3_, when classified information has been, or is suspected of being, lost, compromised, or subjected to compromise, NCIS will be notified immediately. The command will conduct a preliminary inquiry in accordance with SECNAVINST 5510.36_ unless otherwise directed by NCIS. If NCIS declines investigative action, the command may still request investigative assistance in completing the required inquiry. The preliminary inquiry will often be followed by an in-depth JAGMAN investigation. Therefore, the command must be knowledgeable of both the SECNAVINST 5510.36_ and JAGMAN requirements before commencing the inquiry and investigation.

5. Inspector General Investigations. SECNAVINST 5430.57 sets forth the mission and functions of the Naval Inspector General (NAVINSGEN) and the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC). The NAVINSGEN is designated the senior investigative official in the DON and shall initiate and conduct, or direct the conduct of, such inquiries as the NAVINSGEN deems appropriate, with particular emphasis on matters relating to DON integrity, ethics, efficiency, discipline, or readiness. The NAVINSGEN, however, will ordinarily refrain from conducting investigations that focus on individual criminal activity (normally within the authority of NCIS). SECNAVINST 5430.57_ is to be construed so as to avoid interfering with other independently authorized investigations, such as UCMJ inquiries/investigations, JAGMAN investigations, and NCIS criminal investigations. Commanding officers, however, are required to extend full cooperation to the NAVINSGEN. Commanding officers should consult with their local SJA to determine whether a matter falls within the authority of the NAVINSGEN.

6. Aircraft Mishap Investigations. Pursuant to DOD Instruction 6055.7_, OPNAVINST 3750.6_, MCO 3750.1_, and the JAGMAN, more than one investigation may be required into aircraft accidents (and for other exceptional incidents described in paragraph 8001.8a). Safety mishap investigations are normally required for all aircraft mishaps, and they are conducted independently and separately from other types of investigations, to include JAGMAN investigations. If evidence of a criminal act is discovered, then no mishap investigation shall be conducted (in-progress mishap investigations shall be terminated) and NCIS should be notified if the matter falls within their investigative jurisdiction.

a. Mishap Investigation Report Requirements are set forth in OPNAVINST 3750.6_ and MCO 3750.1_. Paragraph 0241 of the JAGMAN details the relationship between military mishap and JAGMAN investigations and sets forth limitations on the integration of these investigations, sharing of evidence obtained, and use/disclosure of the separate investigative reports.

b. Privileged Information in Mishap Investigations. Certain

information contained in mishap investigations is designated as privileged in order to encourage individuals to provide complete information regarding a mishap and aid the discovery of vital safety information. Witness statements, portions of the mishap investigation, and the opinions of mishap investigators normally may not be released for purposes outside of the safety investigation. Exceptions to the privilege and additional details are available in chapter 6 of OPNAVINST 3750.6_ and paragraph 0241 of the JAGMAN.

7. Death Investigations. Paragraph 0220(b) of the JAGMAN implementing Public Law 107-107, the National Defense Authorization Act of Fiscal Year 2002, requires a line of duty determination whenever an active duty service member of the naval service dies. The purpose of the line of duty determination is to enable expedient decisions about eligibility and annuity calculations under the Uniformed Services Survivor Benefit Program. For guidance on death investigations see paragraph 0236 of the JAGMAN.

8. Ground Mishap Investigations. MCO P5102.1_ provides clarification on the types and requirements of ground mishap investigations in the Marine Corps. That Order requires that legal mishap (i.e., JAGMAN) investigations be conducted independently and apart from safety mishap investigations.

a. Limited Use Safety Mishap Investigation Reports are privileged, internal communications of DoD and their sole purpose is prevention of similar mishaps. Aircraft mishap investigations (discussed in paragraph 8001.6) are a type of limited use safety mishap investigation. These investigations are also authorized for ground mishaps involving complex weapons systems or unique military items such as laser devices, remotely piloted vehicles, armored vehicles, etc., when the determination of causal factors is vital to the national defense.

b. General Use Safety Mishap Investigation Reports are used to record data concerning all mishaps not covered by "limited use" investigations discussed in paragraph 8001.8a. Their purpose is to identify the cause(s) of mishaps and resulting damage or injury so that action(s) may be taken to prevent recurrence. Marine Corps ground mishaps will normally be investigated and the information reported as "general use" mishap investigation reports. In determining whether to conduct a safety investigation, commanders should refer to MCO P5102.1_ and consult with their local Director of Safety and Standardization or Safety Officer.

9. Friendly Fire Investigations. An investigation is required into all incidents of friendly fire, as defined by DOD Instruction 6055.7_. Friendly fire is defined by the Instruction as a circumstance in which members of a U.S. or friendly military force are mistakenly or

accidentally killed or injured in action by U.S./friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force. In accordance with the Instruction, the Combatant Commander will convene a legal investigation to determine the facts of all incidents falling within the definition of friendly fire. The Combatant Commander will also guide further actions with regard to the investigation, to include release of the investigation. In consultation with the Combatant Commander, commanders may convene a safety investigation as required.

10. Equal Opportunity Complaint Processing. Chapter 4 of MCO P5354.1_, Marine Corps Equal Opportunity Manual, lists command responsibilities when a report of discriminatory conduct is filed. All reported incidents of discrimination, to include sexual harassment, must be investigated. The nature of the investigation will necessarily depend on the alleged misconduct and could result in referral for a NAVINSGEN/DNIGMC investigation, an NCIS investigation, appointment of a preliminary inquiry officer under R.C.M. 303, MCM, 2002, or a JAGMAN investigation.

11. Supply Investigations. Marine Corps policy is that all missing, destroyed, or damaged Government property will be investigated in accordance with the JAGMAN if either the cause is unknown or to relieve or assign individual responsibility. Chapter 6 of MCO P4400.150_ contains additional requirements concerning the appointment and duties of an investigating officer.

12. BUMED Medical Quality Assurance Program. Guidance regarding medical quality assurance investigations is contained in paragraph 0251 of the JAGMAN and OPNAVINST 6320.7_. Section 1102 of title 10, U.S. Code, requires that documents created by or for DoD as part of a medical quality assurance program are privileged and confidential.

8002. ROLE OF THE SJA. The staff judge advocate (SJA) is responsible for advising the commander on all investigations involving the command. The SJA identifies incidents that require investigation, recommends the appropriate type of investigation to be conducted (command investigations are preferred over litigation-report investigations as they are more responsive to stakeholders; courts/boards of inquiry are rarely conducted), supervises investigations conducted by the command, and provides legal advice to investigating officers or ensures that such advice is otherwise available by assigning a legal advisor to the investigation. The SJA requests investigative assistance from outside agencies, maintains liaison with those agencies, and monitors all investigations involving the command conducted by those agencies. The SJA should be notified whenever an outside agency initiates an investigation involving the command. The SJA resolves conflicts when two or more types of investigations are being conducted involving the same incident and

maintains liaison with higher headquarters regarding the status of investigations.

8003. SCOPING THE INVESTIGATION. Critical decisions must often be made before a convening or appointing order is drafted and the investigation begins. At the outset, the SJA should determine the purpose of the investigation and the type of investigation(s) necessary to fulfill this purpose. Significant considerations in "scoping" an investigation include:

1. The extent of property damage, injury, and/or death;

2. The impact on civilians, civilian structures, and the environment;

3. Suspected intentional and/or negligent misconduct on the part of servicemembers;

4. The potential for initiating or defending a legal action;

5. The type of expertise needed for conducting a thorough investigation;

6. The experience, grade, education, knowledge, objectivity, and temperament required for an effective investigating officer (IO). Appearances may also play a role in determining who to assign as an IO. The IO’s impartiality should not be reasonably subject to question by any of the stakeholders in an investigation. In some cases, appointment of an IO from outside the command will be required;

7. The identity of those with an interest or stake in the outcome of the investigation (e.g., other commands, victims, parents of interested parties, servicemembers, foreign governments, foreign nationals, State governments, Congress, HQMC, Navy JAG, the media, etc.). This consideration is critical. Failure to identify all the stakeholders "up-front" virtually assures relevant questions will not be addressed and that some stakeholders will be disappointed in the investigatory effort. When stakeholders are disappointed in an investigation, complaints to the command and Congress and charges of "cover-up" may ensue; and

8. The possibility of public inquiries concerning the incident and the need for mobilizing Public Affairs assets.

8004. CONVENING INVESTIGATIONS; CONFLICTS; MULTIPLE COMMANDS

1. If the investigation includes allegations of wrongdoing or negligence on the part of the convening authority (CA) (or even the

appearance thereof), then the SJA should recommend that the CA consult with the next senior commander (and SJA) in the chain of command to determine if the senior commander should take responsibility for the conduct of the investigation. For example, if a Marine is killed in a training accident and the regimental commander and staff had a role in designing the training, disseminating SOPs and safety information, or controlling the training, then the division commander should select the IO and convene the investigation.

2. If the investigation involves two or more commands, then the SJA should recommend that the CA consult with the common senior commander (and SJA) for all affected commands to determine if the senior commander should take responsibility for the conduct of the investigation or assign the investigation to a single command for responsibility in conducting the investigation.

8005. THE INVESTIGATING OFFICER; EXPERTS; OTHER ADVISORS

1. When practicable, a CA should appoint an IO who is senior to all individuals whose conduct is subject to inquiry.

2. In some cases, consideration should be given to appointing an IO possessing special knowledge or skills in order to conduct a thorough investigation.

3. Experts may be necessary to assist the IO in resolving complex scientific or technical issues requiring specialized knowledge, skill, experience, training, or education (e.g., NCIS/CID agents, other forensic experts, engineers, maintenance officers, etc.). CAs are encouraged to detail experts in the appointing letter to assist the IO, and the IO should affirmatively seek expert assistance when needed.

4. If criminal or civil litigation may result from the matter giving rise to the investigation, consideration should be given to appointing a legal advisor to ensure evidence is legally obtained, preserved, and available for use at a later time.

8006. THE APPOINTING LETTER

1. If there are specific questions that must be resolved by the investigation, the CA should reference them in the appointing letter.

2. In death cases, CAs should direct IOs to exercise discretion when enclosing graphic photographs (e.g., autopsy photos) to the investigative report. In these cases, the appointing order should direct the IOs attention to section 0240b of the JAGMAN.

8007. NEED FOR CONVENING AN ADMINISTRATIVE OR OTHER TYPE OF INVESTIGATION; NATURE OF INVESTIGATION

1. The conduct of a single investigation may satisfy the requirements for other types of investigations. Commands should strive to combine as many investigative requirements as possible into one investigation, however, safety and mishap investigations normally cannot be combined with JAGMAN investigations.

2. In some instances, it may be appropriate for the CA to appoint a preliminary inquiry officer under section 0204 of the JAGMAN. The CA shall dictate the format and requirements of the preliminary inquiry and may choose to have the preliminary inquiry officer simply gather and document facts for communication to the CA (without providing opinions and recommendations as required by some administrative and other investigations).

8008. ENSURING THAT THE PURPOSE FOR CONDUCTING THE INVESTIGATION IS SATISFIED

1. The SJA must ensure that the CA considers how corrective action, both recommended and concurred with, is initiated, completed, and documented for future reference.

2. In some instances, the IO should be directed to provide interim recommendations to the CA when necessary to avoid further potential injury, destruction, or death. Ensure coordination and follow-up with responsible staff (e.g., S-3/S-4) officers.

3. Regardless of when corrective recommendations are provided, the CA should be advised on the best means for ensuring the recommendations are completed, monitored and, if necessary, modified to ensure that lessons learned are applied for positive results.

8009. CONSIDERATIONS FOR DEATH INVESTIGATIONS.

1. Each active duty death, including combat related deaths, shall be subject to, at a minimum, a preliminary inquiry in accordance with the JAGMAN. The preliminary inquiry shall be conducted by the command to which the deceased member was attached (or the gaining command for service members who die in transit). The command conducting the preliminary inquiry, or higher authority, shall decide whether the preliminary inquiry is sufficient to base a line of duty determination or whether there is need for an investigation. In many cases, a basic letter report attached to a medical record entry, accident report, or

Personnel Casualty Report (PCR) will meet the requirement for a preliminary inquiry and will be sufficient information upon which to base a line of duty determination..

a. If the command completing the preliminary inquiry or investigation is not a general court-martial convening authority (GCMCA) with an assigned staff judge advocate (SJA), the command will forward the inquiry/investigation to the first GCMCA in its chain of command with an assigned SJA. The command will include a written recommendation concerning the line of duty determination. The GCMCA with an assigned SJA is the cognizant official for making the formal line of duty determination, subject to a limited review process described in paragraph (d) below. The GCMCA shall make the line of duty determination in accordance with the guidance in sections 0222-0227 of the JAGMAN.

b. Before making an adverse determination, the GCMCA or his or her SJA shall afford a known potential Survivor Benefit Plan (SBP) beneficiary the opportunity to review the report of investigation and provide relevant information to the GCMCA. A “known potential SBP beneficiary” is the person who would otherwise be the recognized qualified survivor if a favorable determination were made. The Marine Corps Casualty section will provide assistance for Marine Corps commands in identifying potential SBP beneficiaries. Ordinarily, the known potential SBP beneficiary shall be provided 30 calendar days from receipt of the report of investigation to provide information to the GCMCA. In an adverse determination case in which there is no known potential SBP beneficiary, the GCMCA shall make the line of duty determination following a review of the investigation by the SJA.

c. The line of duty determination shall be made in writing by the GCMCA and forwarded to HQMC (MMSR-6), J. W. Marsh Building, 3280 Russell Road, Quantico, Virginia, 22134. For more information contact MMSR-6 at (703) 784-9310, 9304/9305, 1-800-336-4649, (DSN 278), or (703) 784-9834 (fax).

d. For adverse determination cases, the GCMCA shall forward a complete copy of the investigation to MMSR-6, where it will be reviewed by DC (M&RA). DC (M&RA) shall review the line of duty determination and underlying investigation. The determination of the GCMCA shall be sustained unless DC(M&RA) determines that a substantial error occurred that could materially affect the determination. In such cases, DC(M&RA) can make a different determination or return the case to the GCMCA for further investigation. The review and determination of the DC(M&RA) shall be administratively final.

2. Notification of Next of Kin. A major concern in death cases is forwarding timely, relevant, and factual information to the next of kin (NOK). In many cases, the NOK exhibit frustration with the

conduct of death investigations and a perceived lack of information from the Marine Corps. On occasion, these frustrations are exhibited through allegations of investigative ineptitude and cover-up. Early and frequent communication from the command to the NOK will aid in preventing the development of adversary relations between the NOK and the command, and will add to the credibility that the NOK give to the death investigation. Guidelines for notifying and communicating with the NOK of a deceased Marine are provided below. More detailed requirements are published in MCO P3040.4_ (MARCORCASPROCMAN) and paragraph 0233 of the JAGMAN.

a. An investigation into the death of a Marine should seek to answer all legitimate questions surrounding the death that , the NOK may have. Using the utmost discretion, IOs should contact NOK to obtain relevant background information about the deceased Marine or Sailor and discover the issues of concern to the NOK.

b. In any case in which the cause(s) or circumstance(s) surrounding a Marine’s death are under investigation, the Marine’s unit commander will send the NOK a letter notifying them that an investigation has been initiated. The letter will be sent within 14 days after the initial notification of death was provided to the NOK. At a minimum, the letter will include the following: (1) names of DoD agencies conducting the investigation, (2) existence of any reports by such agencies that have been or will be used as a result of the investigation(s), and (3) if NCIS is conducting a death investigation, the name and telephone number of the case agent and NCIS family liaison representative (800-479-9685) at NCIS Headquarters, Washington, D.C.

c. Release of administrative investigation reports outside the DON is governed by SECNAVINST 5720.4_ (FOIA), SECNAVINST 5211.5_ (Privacy Act), and the JAGMAN. As a general rule, no investigative report, evidence, or documents compiled by investigating officials may be released until the report is final. See paragraph 0219 of the JAGMAN. However, special exceptions exist regarding the release of death investigations to the NOK. Within 30 days after the initial notification of death was provided to the NOK and provided that the first general officer in the chain of command has reviewed the investigation, the reviewer will normally provide requesting NOK with copy(ies) of any completed investigative and fatality report(s) unless: the release would violate applicable law (e.g., investigation classified); the endorser can articulate how release would harm the command’s mission, would interfere with an ongoing criminal investigation, or why release should not be made for good cause; or the investigation involves a friendly fire incident as described in paragraph 8001.9 and DOD Instruction 6055.7_, and the release has not been authorized by the appropriate Combatant Commander. Review JAGMAN, 0233 for requirements and exceptions. If the investigation is

not completed within 30 days of the initial notification, then the unit commander is required to notify requesting NOK, in writing, on the status of the investigation. Section 0233d of the JAGMAN also requires, when practicable, hand-delivery of releasable investigations to the NOK by a knowledgeable officer who can discuss the contents with the family.

d. In cases where the Marine’s death may have been self-inflicted, it is essential that only accurate facts and not opinions are provided to the NOK.

e. Section 0240b of the JAGMAN requires that graphic photographs enclosed with command investigations be placed in a separate envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED." The MARCORCASPROCMAN requires a similar warning if the NOK elect to receive copies of investigative reports containing sensitive or gruesome materials. Said materials must be separated from the investigation and placed in a sealed envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC MATERIALS (INCLUDING PHOTOGRAPHS). VIEWER DISCRETION WARRANTED."

f. Prior to the release of any death investigation to anyone other than NOK, the release authority will coordinate with MRPC, Casualty Branch, (703) 784-9512, to confirm that NOK have been notified of the completed investigation and that they have had the opportunity to request/review a copy of the redacted investigation. Releasing authority will also ensure that NOK are advised that the investigation may soon be released pursuant to a press event, media inquiry or FOIA request. In no circumstance shall a death investigation be released before NOK have an opportunity to review the investigation and NOK are advised that it may soon be released. Before releasing any investigation to the media, the releasing authority, working with MRPC, Casualty Branch, must coordinate with their local public affairs office. For any investigation that may result in local, regional or national media coverage, the releasing authority will ensure that proper coordination has been made with CMC (JAD), (703) 614-2510 CMC (PAM), (703) 614-4309/8010, CMC (OLA), (703) 614-1686/1687, the HQMC FOIA office (ARSF), (703) 614-4008, and any other relevant HQMC department before authorizing release. For any JAGMAN investigation involving an aviation incident, the releasing authority will coordinate with DC, Aviation, (APP), (703) 614-2261/2189/1794, and any other pertinent HQMC department before authorizing release. Releasing authorities are reminded to staff these issues within their respective commands and through the proper chain to ensure all echelons of command are fully informed.

g. Mishap/safety investigation reports. The Commander, Naval Safety Center is the sole release authority for any ground or aviation mishap/safety investigation. Any request for a mishap/safety

investigation shall be referred to the Naval Safety Center with a copy of the request provided to HQMC, Safety Division, (703) 614-1202/1077/2147, who shall ensure that the appropriate staff offices within HQMC are aware of the request.

CHAPTER 9

COORDINATION OF CIVIL LITIGATION

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CHAPTER 9

COORDINATION OF CIVIL LITIGATION

9000. SCOPE

1. Purpose. This chapter provides step-by-step procedures for the reporting, notification, and monitoring of Federal civil litigation involving the United States as a party, and for complying with litigation requests or subpoenas for DON information, documents, or witnesses in Federal or State civil litigation where the United States is not a party.

2. Marine Corps or United States a Party. When the Marine Corps or the United States is a party, CMC is the decision-making authority for the Marine Corps. The Staff Judge Advocate to the Commandant (CMC (JA)) or Counsel for the Commandant (CMC (CL)), as appropriate, will coordinate the Marine Corps position with the Office of the Judge Advocate General of the Navy (OJAG), General Litigation Division.

3. Applicability. This chapter applies whenever a civil action seeking injunctive relief is brought against a Marine Corps command or against an individual Marine for actions taken in his/her official capacity, or whenever a subpoena or request for DON information, documents or witnesses is received.

4. Nonapplicability. This chapter does not apply to requests or subpoenas from Federal agencies, nor from State agencies, except in the case where a State has brought suit against the United States.

5. References. Additional guidance is contained in JAGMAN, chapters V and VI, and SECNAVINST 5820.8_.

9001. INJUNCTIVE RELIEF REQUESTED

1. Procedures. If delivery, service, or attempted service of a summons and complaint seeking injunctive relief (habeas corpus, temporary restraining order, or preliminary injunction) is attempted on a Marine Corps command or on any DON member or civilian employee arising from official duties, the Marine Corps command involved in the service of process should immediately notify the command staff judge advocate (SJA).

2. Litigation Action Attorney. The command SJA will immediately appoint a litigation action attorney. The litigation action attorney will be the focal point for any questions or actions regarding the

litigation and will comply with the following procedures:

a. Immediately contact the OJAG, General Litigation Division, DSN 221-9870 [(703) 325-9870], and then CMC (JAR) DSN 224-2510 [(703) 614-2510];

b. Forward a copy of the complaint, summons, and all pleadings to the OJAG, General Litigation Division and CMC (JAR) via express mail or facsimile machine. (OJAG General Litigation FAX - DSN 221-6615, (703) 325-6615; CMC (JAR) FAX - DSN 224-5078, (703) 614-5078.)

c. Submit recurring FAX, telephone or message reports (daily if necessary) of significant developments in the case to the OJAG, General Litigation Division, and CMC (JAR);

d. Keep the local Marine Corps command informed of the status of the case.

9002. SUBPOENAS FOR DOCUMENTS AND WITNESSES

1. Procedure

a. DON Documents or Witnesses. If a Marine Corps command is served with a subpoena seeking DON documents or witnesses, the command should refer the matter to the command SJA. The SJA, in most cases, should return the papers to the civilian counsel; refer them to 32 CFR 725.7 (which publishes SECNAVINST 5820.8_); and advise the attorney that the General Counsel of the Navy (OGC) is the sole DON agent for service of process at the following address: Department of the Navy, Office of General Counsel, The Pentagon, Room 4E516, Washington, DC 20350-1000.

b. Department of Defense Pay Records

(1) Active Duty and Reserves. To obtain pay records of Marines, active duty or Reserves, a separate subpoena must be served on the Defense Finance and Accounting Service - Kansas City Center. The address for service by mail is: Defense Finance and Accounting Service - Kansas City Center, Office of General Counsel, Kansas City, MO 64197-0001. The telephone number is (816) 926-7103.

(2) Retired or FMCR Marines. To obtain pay records of retired or FMCR Marines, a separate subpoena must be served on the Defense Finance and Accounting Service - Cleveland Center. For Garnishment matters, the address for service by mail is: Defense Finance and Accounting Service - Cleveland Center (MUI), 1240 East 9th Street, Cleveland, OH 44199-2055. The telephone number is (216) 522-5118.

For all other pay record matters, the address for service by mail is: —General Counsel's Office, Defense Finance and Accounting Service — Cleveland Center (MUI), 1240 East 9th Street, Cleveland, OH 44199-2055 The telephone number is (216) 522-5396.

2. Privacy Act Compliance. Subpoenas for service record books, medical records, pay records, and other records maintained in a system of records subject to the Privacy Act must be signed by the judge of a court of competent jurisdiction (see MCO P5211.2_, and 5 U.S.C. § 552a(b)(11)). Subpoenas signed by clerks of court should not be honored and referred under 32 CFR section 725.7.

9003. REQUESTS FOR DOCUMENTS, DEPOSITIONS, WITNESSES OR SITE INSPECTIONS

1. United States a Party. In cases where the United States is, or may reasonably become, a party to the lawsuit, the following procedures apply to requests for documents, depositions, witnesses or site inspections:

a. OGC Matters. If subject matter involved is a matter assigned to OGC (see SECNAVINST 5430.25_) such as business and commercial law, patent law, civilian personnel law, or contract claims and litigation:

(1) Forward the request to OGC;

(2) Send a copy of the request to CMC (CL); and

(3) Send a letter to the requesting counsel advising of the referral.

b. OJAG Matters. For all other matters (pursuant to SECNAVINST 5430.27_):

(1) Forward the request to the OJAG, Claims and Tort Litigation Division, or OJAG, General Litigation Division, as appropriate;

(2) Send a copy to CMC (JAR);

(3) Send a letter to the requesting counsel advising of the referral.

2. United States Not a Party. In cases where the United States is not a party, and may not reasonably become a party to the lawsuit, the following procedures apply to requests for documents, depositions, witnesses or site inspections:

a. OGC Matters. If the subject matter is an OGC matter (pursuant to SECNAVINST 5430.25_):

(1) Forward the request to CMC (CL). CL will staff the request to the appropriate Area Counsel's office; and

(2) Send a letter to the requesting counsel advising of the referral.

b. OJAG Matters. If the subject matter is a request for DON personnel to testify as expert witnesses:

(1) Forward the request to the OJAG, General Litigation Division via CMC (JAR); and

(2) Send a letter to the requesting counsel advising of the referral.

c. Other Matters. For any other matters, the Marine Corps "determining authorities" (i.e., general courts-martial convening authorities listed in SECNAVINST 5820.8_) will respond as follows:

(1) Improper Requests. If the determining authority finds the request does not meet the requirements of SECNAVINST 5820.8_, then it is an improper request. The determining authorities will return improper requests to the requesting counsels and refer them to 32 CFR 725.7 .

(2) Proper Requests. Normally, requests made in accordance with 32 CFR 725.7, will be forwarded for action to the respective Marine Corps command from the OJAG, General Litigation Division. In addition to specific direction from the OJAG, General Litigation Division or JAD (JAR), the determining authority will take the following actions:

(a) Respond directly to the requester (copy to CMC (JAR));

(b) Refer the request to another determining authority where the requested witness or document is located and send a letter to the requesting attorney advising of the referral; or

(c) Coordinate the request with CMC (JAR). This is appropriate in cases where a response from several different commands/determining authorities is necessary (for example, a request to depose a number of Marines, now located at several different commands or geographic areas) or where a requested witness is no longer a member of the Marine Corps.

CHAPTER 10

COMPLIANCE WITH COURT ORDERS BY MARINES, DEPENDENTS, AND CIVILIAN EMPLOYEES SERVING OVERSEAS

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CHAPTER 10

COMPLIANCE WITH COURT ORDERS BY MARINES, DEPENDENTS, AND CIVILIAN EMPLOYEES SERVING OVERSEAS

10000. SCOPE

1. This chapter designates responsible Marine Corps officials for acting on a request or order from a court or from Federal, State or local authorities concerning a court order for the return to the United States of servicemembers and their family members or civilian employees and their family members serving overseas.

2. Detailed procedural and policy guidance regarding the processing of requests or orders for the return of servicemembers, civilian employees, and their family members is set forth in SECNAVINST 5820.9 and DoD Directive 5525.9.

10001. POLICY

1. The Marine Corps will cooperate with requests for return pursuant to a court order when such action is consistent with mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing Department of Defense investigations or courts-martial.

2. Every reasonable effort will be made to resolve the matter without returning servicemembers to the United States or by taking other action authorized by SECNAVINST 5820.9 against civilian employees or the family members of servicemembers and civilian employees.

3. In appropriate circumstances, servicemembers may be returned involuntarily to the United States. The involuntary return of civilian employees and family members of both servicemembers and civilian employees is not authorized.

4. In appropriate circumstances, adverse action, to include removal from Federal service, may be taken in the case of civilian employees and the command sponsorship of family members of both servicemembers and civilian employees may be withdrawn.

10002. RESPONSIBLE OFFICIALS

1. CMC (MM) is the responsible official for acting on all requests involving servicemembers and their family members who are not employees.

2. Commanding officers who receive a request for the return of a servicemember or family members of a servicemember belonging to the command will comply with procedures set forth in SECNAVINST 5820.9, and forward the request to CMC (MM) for action.

3. Commanding officers are the responsible officials for acting on all requests involving civilian employees and their family members who are not active duty military members, and will take appropriate action in accordance with SECNAVINST 5820.9.

4. CMC (JA) will provide legal review and advice on requests under the cognizance of CMC (MM). CMC (JAR) is the point of contact for authorities issuing requests for return or other action.

CHAPTER 11

ETHICS PROGRAM

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FIGURE

11-1 ETHICS PROGRAM CALENDAR. . . . . .

CHAPTER 11

ETHICS PROGRAM

11000. SCOPE. This chapter sets forth administrative instructions for the Marine Corps ethics program. Figure 11-1 is an annual calendar of filing and reporting dates under the program.

11001. JOINT ETHICS REGULATION. Department of Defense Directive 5500.7-R of 30 August 1993, the Joint Ethics Regulation (JER), is the single source for standards of ethical conduct and ethics guidance, including direction in the areas of financial disclosure, post-government employment rules, enforcement, and training for the Department of Defense.

11002. RESPONSIBILITIES. Supervision of the Marine Corps ethics program is shared between the Staff Judge Advocate to the Commandant (CMC (JA)) and Counsel for the Commandant (CMC (CL)), who are the designated agency ethics officials (DAEOs) for the Marine Corps. CMC (JA) and CMC (CL) provide ethics advice and training, and monitor financial disclosure reporting in their areas of responsibility as set forth below. Staff judge advocates and local CL attorneys serve as ethics counselors and supervise the ethics programs within their commands or areas of responsibility.

1. CMC (JA)

a. The Research and Civil Law Branch (JAR) administers the ethics program for CMC (JA).

b. JAR provides timely, individual, written notification, including an SF-278 Public Financial Disclosure Report, to all Marine Corps general officers whenever they are required to submit a new entrant, annual, or termination report, and monitors submissions to ensure that all reports are timely filed. JAR also maintains on file the SF-278 reports of all Marine Corps general officers.

c. CMC (JA) is responsible for the final review of the SF-278 reports of all Marine Corps general officers, except for those assigned to joint billets and those general officers at HQMC who fall under the cognizance of CMC (CL). CMC (JA) conducts the initial review of the SF-278 reports of the Counsel for the Commandant and the Deputy Counsel, and forwards the reports to the DON Office of General Counsel (Navy OGC) for final review; and conducts the final review of the SF-278 reports of the following general officers:

(1) Assistant Commandant of the Marine Corps

(2) Director, Marine Corps Staff
(3) Deputy Commandant for Manpower and Reserve Affairs

(4) Deputy Commandant for Plans, Policies, and Operations

(5) Deputy Inspector General/Inspector General for Marine Corps

(6) Commanding General, Marine Corps Recruiting Command

(7) Director, Public Affairs

(8) Director, Legislative Affairs

d. CMC (JA) conducts the legal review of the Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report, for all personnel who report to the general officers identified in paragraph 11002.1c, and maintains those reports on file.

e. JAR compiles and submits for the Marine Corps all reports required by the ethics program.

2. CMC (CL)

a. CMC (CL) provides timely, individual, written notification, including an SF-278 Public Financial Disclosure Report, to all Marine Corps Senior Executive Service (SES) personnel whenever they are required to submit a new entrant, annual, or termination report, and monitors submissions to ensure that all reports are timely filed.

b. CMC (CL) conducts the initial review of the SF-278 reports of all Marine Corps SES personnel (except CMC (CL)) and forwards them to the Navy OGC for final review. CMC (CL) is responsible for the final review of the SF-278 reports of the following general officers at HQMC:

(1) Commandant of the Marine Corps

(2) Deputy Commandant for Aviation

(3) Deputy Commandant for Installations and Logistics

(4) Deputy Commandant for Programs and Resources

(5) ~~**Director**~~ Deputy Commandant for Command, Control, Communications, and Computers

~~(6) Director of Intelligence~~

(~~7~~6) Staff Judge Advocate to the Commandant

c. CMC (CL) conducts the legal review of the OGE Form 450, Confidential Financial Disclosure Report, of personnel who report to the general officers identified in paragraph 11002.2b, and maintains those reports on file.

3. Ethics Counselors

a. Ethics counselors are responsible for supervising the ethics program for their organization, review and compliance with financial disclosure reporting, and providing ethics advice, to include post-government employment opinions, to commanders, individual Marines, and civilian personnel. CMC (CL) is responsible for the coordination and consistency of ethics opinions within the Marine Corps.

b. As DAEO for the Department of the Navy, the Navy OGC has designated the following ethics counselors within the Marine Corps:

(1) Head, and Deputy Head, Research and Civil Law Branch, Judge Advocate Division, HQMC;

(2) Director, Joint Law Center, MCAS Yuma, AZ;

(3) Director, Joint Law Center, MCAS New River, NC;

(4) Director, Joint Law Center, MCAS Beaufort, SC;

(5) Station Judge Advocate, MCAS Iwakuni, Japan;

(6) Staff and force judge advocates for all staffs and commands having GCM convening authority; and

(7) CMC (CL) designated ethics counselors.

c. Pursuant to JER paragraph 1-401, ethics counselors must be designated in writing by the DAEO. Submit requests for additional designations to CMC (JA) or CMC (CL), as appropriate.

11003. FINANCIAL DISCLOSURE. The purpose of financial disclosure reports is to assist Federal agencies in identifying potential conflicts of interests between the official duties of employees and their private financial interests and affiliations. The Office of Government Ethics establishes rules and regulations for both the public and confidential financial disclosure systems.

1. Public Financial Disclosure Report (SF-278) (Report Control Symbol DN-5370-01)

a. Individuals Required to File. Regular and Reserve military officers whose pay grade is O-7 or above, and civilian employees in an SES position.

b. Time of Filing

(1) New Entrant Reports. Within 30 days of assuming a covered position, a reporting individual shall submit an SF-278.

(2) Annual Reports. Any time after 1 January, but not later than 15 May, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF-278.

(3) Termination Reports. Not later than 30 days after termination from a covered position, a reporting individual shall submit a SF-278. Filers may post-date their reports for convenience, in particular before departing on terminal leave. Ethics counselors must ensure that no changes occur between signing and the effective date.

(4) Combined Annual/Termination Report. Reporting individuals who anticipate terminating their DoD employment before 30 June may request an extension of up to 45 days in order to file one consolidated report. Combined annual/termination reports must be filed within 30 days after termination of employment but not later than 15 July.

(5) Late Filing Fee. Any reporting individual who is required to file an SF-278 and does so more than 30 days after the required filing date shall be subject to a $200.00 late filing fee. Note that combat zone and other administrative extensions are available as circumstances justify.

2. Confidential Financial Disclosure Report (OGE Form 450) (Report Control Symbol DN-5370-02)

a. Individuals required to file

(1) Commanding officers, executive officers, heads, and deputy heads of:

(a) Navy shore installations with 500 or more military and civilian DoD employees; and

(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) DoD employees when their official responsibilities require them to participate personally and substantially through decision making or the exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which their final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity.

b. Time of Filing

(1) New Entrant Reports. A reporting individual shall submit an OGE Form 450 with information current as of the filing date for the preceding 12 months, through the supervisor to the ethics counselor not later than 30 days after assuming duties in a covered position.

(2) Annual Reports. A reporting individual who was employed at least 61 days during the preceding reporting period must submit an OGE Form 450 to the ethics counselor by 30 November of each year covering the preceding 12 months. Individuals who have previously filed an OGE Form 450 may be eligible to file the OGE Optional Form 450-A (short form). Refer to the JER for further guidance.

11004. TRAINING

1. Initial Ethics Orientation (IEO) for New DoD Employees

a. Within 90 days of entering on duty, all new DoD employees who have not previously received ethics training shall receive an IEO.

b. The DAEO shall ensure that new, active duty enlisted members of the armed services receive, within 180 days of entering on active duty, initial ethics training.

c. An IEO shall be a minimum of 1 hour of official duty time. The amount of official duty time given to new employees to review written materials required by the IEO may be reduced by the amount of time they spend receiving verbal ethics training during official duty time.

2. Annual Ethics Training. All DoD employees who file an SF-278 or OGE Form 450 shall receive 1 hour of ethics training annually to be completed by 31 December.

3. Training Materials. JAR will distribute annual ethics training materials prepared by OGE and the DoD Standards of Conduct Office to all commands.

11005. REPORTING GIFTS OF TRAVEL AND FOREIGN GIFTS. Figure 11-1 lists required reporting dates. Refer to chapter 12 for reporting formats and guidance on processing these gifts.
1 January: CMC (JAR) mails annual SF-278 notifications to all general officers.

15 January: Ethics counselors send responses to OGE annual questionnaire to CMC (JAR).

15 January: Ethics counselors report foreign gifts of more than minimal value received during previous calendar year to CMC (JAR).

30 January: CMC (JAR) reports foreign gifts of more than minimal value received by the Marine Corps during previous calendar year to Navy OGC.

30 April: Ethic counselors report gifts of travel/travel related expenses in excess of $250.00 accepted under 31 U.S.C. § 1353 to CMC (JAR).

15 May: CMC (JAR) makes semiannual report of gifts of travel/travel related expenses to Navy OGC.

15 May: Annual SF-278s required to be filed with ethics counselors.

15 October: CMC (JAR) notifies HQMC personnel of requirement to file an annual OGE Form 450 on or before 30 November.

31 October: Ethic counselors report gifts of travel/travel related expenses in excess of $250.00 accepted under 31 U.S.C. § 1353 to CMC (JAR).

15 November: CMC (JAR) makes semiannual report of gifts of travel/ travel related expenses to Navy OGC.

30 November: All annual OGE Form 450s due. Report due to CMC (JAR) that all reports filed.

1 December: CMC (JAR) mails OGE annual ethics questionnaire to ethics counselors.
15 December: Ethics counselors report to CMC (JAR) on status of OGE Form 450 filings.

15 December: CMC (JAR) reports gifts to foreign governments and individuals to Navy OGC.

31 December: Ethics counselors report to CMC (JAR) on completion of annual ethics training.

Figure 11-1.--Ethics Program Calendar.

CHAPTER 12

GIFTS

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FIGURE

FOREIGN GIFT OF MORE THAN MINIMAL VALUE . . . .

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CHAPTER 12

GIFTS TO THE MARINE CORPS

12000. SCOPE. This chapter implements policy and procedures for accepting gifts to the Marine Corps pursuant to SECNAVINST 4001.2_ and SECNAVINST 1650.1_. It covers:

1. Gifts under 10 U.S.C. § 2601. Acceptance of gifts for the establishment, operation, or maintenance of a school, hospital, library, museum, cemetery, or any other organization under the jurisdiction of the Marine Corps authorized by 10 U.S.C. § 2601;

2. Gifts from foreign governments;

3. Gifts to the Commandant's House;

4. Gifts to a Marine Corps special service recreation fund;

5. Gifts given to MWR activities;

6. Gifts of Travel under 10 U.S.C. § 1353. Acceptance of payment from a non-Federal source for travel expenses authorized under 31 U.S.C. § 1353 (implemented by 41 C.F.R. § 301-1.2 and Chapter 304 as well as Chapter 4 of the JER); and

7. Gift acceptance authority and delegations.

12001. DEFINITIONS

1. Gift, unless otherwise qualified, means a gift, devise, bequest, or loan (other than of money) of real or personal property without consideration.

2. Money means cash, checks, or other forms of negotiable instruments.

3. Personal property includes clothing, jewelry, household furnishings, money, vehicles, stocks, bonds, and all property not defined as real or intellectual property.

4. Real property includes land and any buildings, improvements, or fixtures on that land.

5. Intellectual property includes any patent, trademark, copyright, or other intangible property interest of a similar nature.

6. Organization includes any activity under the jurisdiction of the Marine Corps including, but not limited to, any defined organizational unit or activity, nonappropriated fund activity, research and development facility, school, hospital, library, museum, or cemetery.

7. Acceptance authority is the DON official or officer who, on behalf of the Secretary of the Navy, may accept gifts that satisfy the criteria found in this chapter. The acceptance authorities for particular categories of gifts are listed below.

8. Foreign government includes any unit of foreign governmental authority (including any foreign national, state, local, or municipal government or armed force), any international or multinational organization whose membership is comprised of any of the units of foreign governments described above, and any agent or representative of any such unit or organization while acting as such.

9. Prohibited source means any person who (1) is seeking official action by the Marine Corps or the DON; (2) does business or seeks to do business with the Marine Corps or the DON; (3) conducts activities regulated by the Marine Corps or the DON; (4) has interests that may be substantially affected by the performance or nonperformance of official duties by Marine Corps or DON personnel; or (5) is an organization a majority of whose members are described in (1) through (4) above. No person or organization shall be deemed a prohibited source for the purposes of this chapter solely because of the offer of a gift or because the stated purpose of the organization includes the provision of financial support to DON, its components, or DON personnel.

10. For the purposes of this chapter, Marine Corps personnel include:

a. All members of the Marine Corps, regular or Reserve, on active duty, active duty for training, and periods of inactive duty training, such as drills or other appropriate duty;

b. All Navy military personnel, regular or Reserve, on active duty, serving with the Marine Corps; and

c. All civilian employees of the DoD serving with the Marine Corps, including personnel of nonappropriated fund instrumentalities.

12002. POLICY. Any gift, regardless of value, will be refused by the Marine Corps if at some future time it might embarrass or lead to criticism of the Marine Corps or the DON by reason of favors which might be expected as a result of the gift, by creating the appearance

of a relationship in which favors are granted, or if it might result in unwarranted publicity for the donor at the expense of the Government.

1. Conditional Gifts. An offer of a gift to the Marine Corps with specified conditions, other than the use to which the gift shall be put, will normally not be accepted. Such gifts might include loans of property, property donated with unduly burdensome conditions or conditions that improperly discriminate among beneficiaries, or gifts requiring expenditures of funds or administrative effort that outweigh the value of the gift.

2. Solicitation of Gifts. Unless specifically authorized by the Secretary of the Navy, Marine Corps personnel shall not solicit gifts for the Marine Corps or its personnel and no gift that is the result of an unauthorized solicitation shall be accepted. Further, as provided in DoD 5500.7-R, Joint Ethics Regulation (JER), the solicitation of gifts from prohibited sources by Marine Corps personnel for themselves, their spouses, minor children, or members of their household is prohibited and may result in disciplinary action.

3. Selective Endorsement. DoD and DON policies proscribe giving preferential treatment to any organization or person. No gift from a commercial enterprise, non-profit organization, or individual shall be accepted if such acceptance would reasonably create the appearance of selectively endorsing the donor, its products, or its services.

4. Future Gifts. A gift may not be accepted until actually offered. An offer by a donor to raise funds for future donation to the Marine Corps, for example, shall be treated as a pledge for a future gift. If the ultimate gift is acceptable under this chapter, the acceptance authority should so advise the donor that the gift cannot be finally accepted until fund-raising is completed and the funds, or the property purchased with the funds, offered to the Marine Corps.

5. Gifts from Foundations and Similar Entities. Foundations and other non-profit organizations may provide valuable support to the Marine Corps; however, such organizations should not be used as a conduit for such sources to make gifts indirectly that would not be permitted under the gift acceptance policies if they were offered directly to the Marine Corps. Acceptance authorities must exercise caution before accepting a gift from a foundation (or similar entity) that solicits funds or other property for future donation to the Marine Corps, its organizations or personnel to ensure that the donation is not an attempt to circumvent the policies contained in this chapter.

6. Fund-Raising by Marine Corps Personnel. Participation by Marine

Corps personnel in activities to raise funds for future presentation to the Marine Corps, or for the purchase of real or personal property to be presented to the Marine Corps in the future, is governed by DoD policy which prohibits DoD personnel from participating in their official military capacity in fund-raising activities which are not recognized for on-the-job solicitation with the Federal service. This prohibition applies to official participation during duty and non-duty hours, but does not preclude participation in fund-raising activities as a private citizen during non-duty hours. Refer to the JER for specific guidance.

7. Gifts from Prohibited Sources. Acceptance of gifts from prohibited sources requires heightened sensitivity because acceptance may create embarrassment to the Marine Corps or the DON, or the appearance of influencing official decision-making or actions of the Marine Corps or the DON. Consequently, before accepting a gift of more than $5,000.00 from a prohibited source, the acceptance authority shall inform the Staff Judge Advocate to the Commandant (CMC (JA)) of the offer. CMC (JA) shall then consult with and request a determination from the Office of General Counsel for the Navy (Attn: Assistant General Counsel (Ethics)) whether the donor is involved in any claims, procurement actions, litigation, or other matters involving the DON, and will provide this information to the gift acceptance authority. Additionally, gift acceptance authorities shall provide a copy of each gift acceptance decision involving a gift from a prohibited source to CMC (JA), who will provide a copy to the Office of General Counsel for the Navy.

8. Gifts From Foreign Governments

a. Gifts of Minimal Value. Table favors, mementos, or other remembrances bestowed at official functions, and other gifts of minimal value (i.e., $~~305~~285.00 or less) received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the recipient.

b. Gifts of More than Minimal Value. When a gift of more than minimal value (i.e., more than $~~305~~285.00) is tendered, the donor should be advised that statutory provisions and DoD policy prohibit Marine Corps personnel from accepting such gifts. If it appears that refusal of a gift would be likely to cause embarrassment to the donor or could adversely affect the foreign relations of the United States, it may be accepted as a gift to the Marine Corps and becomes Marine Corps property. The gift may be retained for official use by the command or forwarded to CMC (JAR) as excess property for disposal by the General Services Administration (DoD Directive 1005.13 and SECNAVINST 1650.1_ provide additional guidance). If forwarded for

disposal, include a cover letter with all information specified in subparagraphs 12002.8c(1) through (5).

c. Reporting Requirement. Each command shall maintain records of gifts of more than minimal value received by their employees from foreign governments. A report of all such gifts received during the preceding calendar year (Report Control Symbol EXEMPT) shall be forwarded annually to CMC (JAR) no later than 15 January (negative reports not required). The report (figure 12-1) shall include the following information:

(1) Name and title of recipient

(2) Brief description of the gift, date of acceptance, estimated value, and current disposition or location

(3) Identity of foreign donor and government

(4) Circumstances justifying acceptance

(5) Whether recipient desires to participate in sale of gift if sold by GSA.

9. Acceptance of Travel From a Non-Federal Source

a. Gifts of Travel. 31 U.S.C. § 1353 permits non-Federal sources to pay the Government, in kind or by reimbursement, for the expenses of travel, accommodations and meals for Government officials and employees attending meetings, conferences, or events of a similar nature. Implementing regulations are found at 41 C.F.R. § 301-1.2 and Chapter 304 as well as Chapter 4 of the JER.

b. Acceptance Procedures. Before accepting payments for travel from a non-Federal source, the travel approving authority should make the following determinations:

(1) Payment is for attendance at a meeting or similar function. This excludes events required to carry out an agency's statutory and regulatory functions. It also excludes promotional vendor training.

(2) Payment is for travel related to the employee's official duties.

(3) Acceptance of the payment under the circumstances would not cause a reasonable person with knowledge of all the relevant facts to question the integrity of Department of the Navy programs or

operations. The travel approving authority must be guided by all relevant considerations, including but not limited to the:

(a) Identity of the non-Federal source;

(b) Purpose of the meeting;

(c) Identity of other expected participants;

(d) Nature and sensitivity of any matter pending within the Department of the Navy which may affect the interest of the non-Federal source;

(e) Significance of the employee's role in any such matter; and

(f) Monetary value and character of the travel benefits offered by the non-Federal source.

(Note: The travel approving authority may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the Department of the Navy to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.)

(4) The travel is primarily for the benefit of the Government, not the organization.

c. Reporting Requirement. Each travel approving authority shall report gifts of travel of more than $250.00 to CMC (JAR) semiannually on 30 April and 30 October using SF 326 (negative reports not required).

d. The offer of payment shall be accounted for and processed per the Joint Federal Travel Regulations (uniformed members) or the Joint Travel Regulations (civilian personnel).

12003. PROCESSING OF GIFTS OF PERSONAL PROPERTY TO THE MARINE CORPS

1. Procedures. The following procedures shall be employed in processing gifts of personal property to the Marine Corps:

a. When any Marine Corps organization is offered a gift, the recipient shall acknowledge the offer and advise the prospective donor

that the offer has been forwarded to the appropriate acceptance authority.

b. Offers of gifts shall be forwarded promptly to the acceptance authority via the chain of command. The forwarding correspondence should contain the information provided in the sample at Figure 12-2.

c. If tangible property of any kind other than money is received, the receiving organization shall temporarily assume custody of the property. The property shall not be taken up on the property account records of the organization concerned, however, until after final acceptance by the appropriate acceptance authority.

d. When money is offered as a gift, it shall be forwarded to the appropriate acceptance authority as an attachment to correspondence that conforms to Figure 12-2. (Gifts of money tendered in the form of negotiable instruments must be made payable to the Department of the Navy.) The funds shall then be forwarded to CMC (RFO) for submission to the Assistant for Administration, Deputy Under Secretary of the Navy (AAUSN). Once the gift has been properly accepted, the funds will be deposited and, in most cases, returned to the receiving activity.

e. Gifts offered to Morale, Welfare and Recreation (MWR) organizations should be processed in accordance with MCO P1700.27_.

f. Birthday Balls. If a gift is to an MCCS activity, gift acceptance rests with MCCS. If a private organization has been set up to plan and coordinate the social portion of the Marine Corps birthday ball, the private organization, rather than the Marine Corps or unit, may accept gifts designated for, or to defray the costs of, the social portion of the ball. (Chapters 2 and 3 of the JER govern official and personal capacity involvement with such private organizations.) Finally, gifts may be accepted as gifts to the Marine Corps, in which case, the procedures of paragraph 12003 apply.

g. Any gift offered by a foreign government must be processed under the procedures in Chapter 2 of the JER and paragraph 12002.8. Offers of gifts of travel may be accepted under paragraph 12002.9.

h. In exceptional circumstances where a limited time offer must be expeditiously accepted, such as an offer of tickets to a near-term event or a gift of travel taking place in a short time, the offer may be forwarded to the acceptance authority in message format or by facsimile, copying the chain of command.

i. Any offer of a gift of real property, regardless of value, made for the benefit of, or in connection with the establishment,

operation, or maintenance of any Marine Corps organization, shall promptly be referred to the cognizant general officer in command or district director who shall forward the offer with comments and a recommendation regarding acceptance to the engineering field division of the Naval Facilities Engineering Command serving the area where the offered property is located for further handling per SECNAVINST 4001.2_. The general officer in command or district director shall forward a copy of such correspondence to CMC (CL). The engineering field division concerned shall staff through CMC any offer of a gift of real property to a Marine Corps organization. Under SECNAVINST 4001.2_, only the Secretary of the Navy can accept gifts of real property.

j. Any offer of a patent, trademark, copyright or other gift of intellectual property for the benefit of, or in connection with the establishment, operation, or maintenance of any Marine Corps organization shall be promptly referred to CMC (CL).

k. Any offer of a gift to the Marine Corps made through the religious offerings fund will be processed per MCO 7010.17_. This includes funds collected during church services. However, offers of gifts designated for a use other than that for which a church service offering is made shall be processed under this chapter rather than MCO 7010.17_ (money donated for the purchase of a stained glass window for a base chapel is an example of such a gift).

l. Where money is offered as a gift and the donor has not specified a use for the money, the receiving organization shall recommend a use to the acceptance authority.

m. Acceptance authorities may accept gifts of personal property to the Marine Corps consistent with the policy stated in this chapter and within the value limitations specified in paragraph 12003.2. Acceptance authorities shall maintain records of gifts per paragraph 12006. Acceptance authorities shall direct the recipient of the gift to acknowledge the generosity of the donor in appropriate correspondence.

n. Acceptance authorities that approve gifts having significant public affairs implications shall notify the appropriate public affairs officer.

o. Gifts of an artistic or historic nature will be reviewed by the Director, Marine Corps History and Museums (CMC (HD)) if of a value exceeding $5,000.00 to ensure suitability prior to their acceptance by any Marine Corps acceptance authority or, in the case of gifts valued at $50,000.00 or more, prior to forwarding the gift to

the Secretary of the Navy's acceptance authority per SECNAVINST 4001.2_.

2. Acceptance Authorities. The following officials are authorized to accept gifts within their cognizance:

a. Any Marine commander may accept gifts of consumable or perishable products such as food, nonalcoholic beverages, flowers, candy, etc., intended for personnel of that command provided that acceptance of such a gift does not violate the policies set forth in this chapter. Alcoholic beverages and tobacco products may not be accepted. This acceptance authority is limited to items which will be consumed at one specific event; e.g., command picnic, delayed entry pool party, etc. This authority may not be redelegated.

b. Officers exercising special court-martial jurisdiction are authorized to accept gifts of personal property to the Marine Corps of a value not exceeding $1,500.00. This authority may not be redelegated.

c. The Director, Marine Corps History and Museums may accept gifts to the Marine Corps of personal property having historical significance or artistic work of museum quality of a value not exceeding $10,000.00. This authority may not be redelegated.

d. General officers in command and district directors may accept gifts of personal property offered to the Marine Corps of a value not exceeding $10,000.00. This authority may not be redelegated.

e. The Staff Judge Advocate to the Commandant and the Counsel for the Commandant may accept gifts of personal property to the Marine Corps of a value not exceeding $10,000.00. This authority may not be redelegated.

f. The Commandant of the Marine Corps may accept gifts of personal property to the Marine Corps of a value not exceeding $50,000.00. The authority to accept such gifts of a value exceeding $10,000.00 may not be redelegated except with approval of the Secretary of the Navy. Gifts which may be accepted only by the CMC shall be forwarded to CMC (JAR) for processing.

g. The Director of an MWR activity may accept gifts of a value not exceeding $3,000.00. The Director, Personnel and Family Readiness Division will be the acceptance authority for gifts to MWR activities in excess of $3,000.00.

3. Gifts of Personal Property Valued at More Than $50,000.00. Gifts

of personal property of a value of more than $50,000.00 shall be forwarded to CMC (JAR) for submission to the appropriate acceptance authority per SECNAVINST 4001.2_.

4. Costs of Gift Transfer from Donor to Recipient. The Secretary of the Navy may pay all expenses in connection with the conveyance or transfer of accepted gifts. Under SECNAVINST 4001.2_, authority to pay such expenses is delegated to the activity head whose appropriations are properly chargeable in connection with the particular organization to be benefited.

12004. LEGAL QUESTIONS. Any questions of law which may arise in connection with this chapter should be referred to the staff judge advocate of the cognizant acceptance authority, or CMC (JAR) or CMC (CL), as appropriate.

12005. GIFT TAXATION. For the purposes of Federal income, estate, and gift taxes, gifts of property to the Marine Corps or its organizations shall be considered gifts to the United States. Donors not eligible for legal assistance should be advised to consult private tax experts for specific advice concerning permissible deductions.

12006. RECORDS, REPORTS AND FILES RELATING TO GIFTS MADE TO THE MARINE CORPS. Such records shall be maintained by the designated acceptance authority for the following periods:

1. Records relating to accepted gifts shall be retained for 3 years.

2. Records relating to gifts not accepted shall be retained for 1 year. Depending upon the nature of a gift and/or the circumstances surrounding its offer, the above retention periods may be extended at the discretion of the acceptance authority.

From: Commanding Officer
To: Commandant of the Marine Corps (JA)
Via: Chain of Command

Subj: FOREIGN GIFT OF MORE THAN MINIMAL VALUE (REPORT CONTROL SYMBOL EXEMPT)

Ref: (a) SECNAVINST 1650.1_
(b) LEGADMINMAN

1. A foreign gift of more than minimal value was received during (*insert calendar year*). The following information is submitted per the references:

a. Name, grade, social security number, and position of recipient.

b. Description of gift (composition, size, brand, etc.).

c. Estimated retail value of the gift in the United States at the time of acceptance (a specific dollar amount is required).

d. Name and position of donor and identity of foreign government.

e. Date and place gift accepted by recipient.

f. Circumstances justifying acceptance.

g. Whether recipient desires to participate in sale of gift if sold by GSA.

Figure 12-1.—Foreign Gift of More Than Minimal Value.

~~Figure 12-1.--Foreign Gift of More Than Minimal Value.~~

From: Commanding Officer (receiving organization)
To: (Acceptance Authority)
Via: (Chain of Command)

Subj: OFFER OF GIFT

Ref: (a) LEGADMINMAN

Encl: (1) Check or Money Order

1. _____, the donor, a (private individual) (corporation)(charitable organization), (doing)(not doing)(seeking) business with the U.S. Government, has offered the following gift to (the U.S. Marine Corps) (organization). The offer is forwarded for action per the reference.

2. The gift is a (check)(money order) in the amount of $_____, made payable to the Department of the Navy, and is forwarded as an enclosure.

OR

2. The gift is a _____ of a value of $_____. I have taken temporary custody of this gift pending action of the acceptance authority. Administrative, maintenance, security, and storage costs are estimated to be (minimal)(about $_____ per year.)

3. This gift (was)(was not) solicited. It (does)(does not) have conditions other than to be used to _____. (If the gift is conditional, state those conditions.)

4. This gift (does)(does not) have the potential to embarrass the Marine Corps or to raise questions as to the integrity of the decision-making process within the Marine Corps. (If potential for embarrassment exists, explain.)

5. I believe this gift (will)(will not) be useful to the Marine Corps. I (do)(do not) believe that acceptance will result in embarrassment to the Marine Corps by reason of favors which might be expected as a result of the gift, by creating the appearance of a relationship in which favors are granted, or by resulting in unwarranted publicity for the donor. I recommend that this gift be (accepted)(declined).

6. If the gift is accepted, I will send an appropriate letter thanking the donor (and take up the gift on the property account of this command.)

Figure 12-2.--Sample Gift Offer Forwarding Letter.

CHAPTER 13

CLAIMS

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FIGURE

13-1 NLSO CLAIMS JURISDICTION FOR U.S. & TERRITORIES

CHAPTER 13

CLAIMS

13000. SCOPE

1. This chapter sets forth procedures and responsibilities for processing claims against the Marine Corps for injuries or property damage arising in the United States and its territories.

2. This chapter does not address claims arising in foreign countries or claims brought by military personnel or Federal Government employees. For detailed guidance on processing these claims, refer to JAGINST 5890.1 or contact the command staff judge advocate (SJA). Commands without an assigned SJA should refer to chapter 22 of this Manual to determine the SJA responsible for providing this advice.

13001. RESPONSIBILITIES

1. Commanding officers are responsible for the expeditious processing of all claims received by their commands and for the expeditious investigation of claims arising from the activities of their commands.

2. SJAs are responsible for advising commands on processing claims and the conduct of claims investigations.

3. The Judge Advocate General of the Navy is responsible for adjudicating and paying all claims made against Marine Corps commands. Within the United States, claims are adjudicated at one of three regional Naval Legal Service Offices (NLSOs) based on the geographic location of the incident giving rise to the claim. Figure 13-1 depicts the geographic jurisdictions of the three NLSOs and provides their addresses and telephone numbers.

13002. PROCEDURES

1. Claims against the Government are required to be filed on a Standard Form 95 (SF-95). Commands should provide this form to individuals who indicate a desire to file a claim or who submit a claim by some other means.

2. Upon receipt of an SF-95 arising from the activities of the command receiving the claim, the command shall:

a. Stamp or mark the date and time of receipt and forward the original SF-95 within 2 business days to the responsible NLSO listed in Figure 13-1;

b. Send a letter to the claimant advising that the SF-95 was received and forwarded to the NLSO, with the NLSO's address and telephone number; and

c. Complete and forward an investigation of the claim via the chain of command to the responsible NLSO within 14 business days of receipt of the SF-95.

(1) Commands should contact their SJA for guidance before initiating the investigation and should delay completing investigations only upon the advice of the SJA.

(2) For additional guidance, procedures, and checklists for conducting investigations of specific types of incidents, refer to the JAG Manual and Chapter 8 of this instruction. Investigations of routine incidents like traffic accidents involving minor property damage will usually only require that the investigator obtain a copy of the police report, interview the military personnel and witnesses involved, and make a determination whether the military personnel were acting within the scope of their official duties at the time of the incident.

3. If the claim arose from the activities of another Marine Corps or Navy command, the command receiving the SF-95 shall:

a. Stamp or mark the date and time of receipt and forward the original SF-95 within 2 business days to the responsible NLSO listed in Figure 13-1;

b. Forward a copy of the SF-95 to the responsible command via the chain of command; and

c. Send a letter to the claimant advising that the SF-95 was received and forwarded to the responsible NLSO and command with their addresses and telephone numbers.

4. If the claim arose from the activities of another branch of the armed forces, the command receiving the SF-95 shall:

a. Forward the original SF-95 to the responsible command via the chain of command; and

b. Send a letter to the claimant advising that the SF-95 was

forwarded to the responsible command with that command's address and telephone number.

NAVAL LEGAL SERVICE OFFICE CLAIMS JURISDICTION
FOR UNITED STATES AND TERRITORIES

Naval Legal Service Office, Mid-Atlantic
Claims Department
9620 Maryland Ave, Suite 100
Norfolk, VA 23511-2989
Telephone: (757) 444-1993/2251, DSN 564
Fax: (757) 444-1771

Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Washington DC, West Virginia, Vermont, Virginia, and Virgin Islands.

Naval Legal Service Office, Central
Claims Department
206 South Avenue, Suite B
Pensacola, FL 32508-5100
Telephone: (904) 452-3736, DSN 922
Fax: (904) 452-4576

Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Texas, and Wisconsin.

Naval Legal Service Office, Southwest
Claims Department
2585 Callagan Highway
San Diego, CA 92136-5090
Telephone: (619) 556-7261, DSN 526
Fax: (619) 556-7772

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Oklahoma, Oregon, Nevada, New Mexico, Utah, Washington, and Wyoming.

Figure 13-1.--NLSO Claims Jurisdiction for U.S. & Territories.

CHAPTER 14

LEGAL ASSISTANCE PROGRAM

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CHAPTER 14

LEGAL ASSISTANCE PROGRAM

14000. SCOPE. To promulgate policy, prescribe procedures, and assign responsibilities for the Marine Corps Legal Assistance Program. This chapter provides supplemental guidance to the Department of the Navy policy contained in JAGINST 5800.7C, Manual of the Judge Advocate General (JAGMAN), and JAGINST 5801.2, Navy-Marine Corps Legal Assistance Program. Activities and personnel providing services under this program shall comply with these directives. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) is responsible for the overall supervision and administration of the Marine Corps Legal Assistance Program. The activity responsible for this chapter is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (JAL) (703) 614-1266 / DSN 224-1266.

14001. BACKGROUND AND POLICY STATEMENT

1. Legal assistance has been provided to Marines, members of the armed forces, and their families, since 1943. Congress officially recognized the military services' legal assistance programs in 1984 by enacting 10 U.S.C. § 1044, which authorizes provision of legal assistance to eligible clients, and mandates, *inter alia,* that the Service Secretaries supervise their respective legal assistance programs. Paragraph 0702(a) of the JAGMAN directs the Commandant of the Marine Corps to supervise and control the Marine Corps Legal Assistance Program. Worldwide and deployable legal assistance is now regarded as a significant benefit of military service and a major quality of life program that enhances duty performance and retention of personnel. The specialized expertise gained by Marine Corps judge advocates in legal assistance billets constitutes a core capability that must be retained by the Marine Corps judge advocate community to fulfill its mission.

2. The focus of the legal assistance program is to assist those eligible for legal assistance with their personal legal affairs in a timely and professional manner by providing clients legal counsel, support, and representation to the maximum extent

possible.

14002. LEGAL ASSISTANCE BRANCH (JAL)

1. Mission. The mission of JAL is to implement and supervise the Marine Corps Legal Assistance Program, to provide continuous supervision and guidance to Marine Corps legal assistance attorneys (LAAs) and staff in the field, to disseminate legal assistance policies and procedures, to foster communication and inspect the effectiveness of legal assistance programs, and to assist and advise the SJA to CMC on all legal assistance policies, procedures, and related matters.

2. Functions. JAL will accomplish its mission by performing the following tasks:

a. Provide advice regarding legal assistance policies, issues, and procedures;

b. Standardize legal assistance software programs and their related equipment (in conjunction with CMC (JAI));

c. Recommend and implement both mandatory and discretionary legal assistance and preventive law policies, programs, and procedures;

d. Communicate with legal assistance offices on developments, changes and trends in the law via site visits, video teleconferences, continuing legal education seminars, newsletters, e-mail, the legal assistance web page, and other available communication resources;

e. Support legal assistance providers with resources to enhance their practices;

f. Coordinate the Marine Corps Legal Assistance Program with the Legal Assistance programs of the other uniformed services to achieve maximum standardization and compatibility of programs, policies and resources;

g. Coordinate with the other uniformed services to identify the best ways to deliver legal services to clients and to identify trends and potential problems requiring preventive measures;

h. Coordinate with the Armed Forces Tax Council, Department of Defense working groups, and various other entities (e.g., Internal Revenue Service, Immigration and Naturalization Service, Federal Trade Commission, Defense Finance and Accounting Service, The Judge Advocate General's School of the Army, and Naval Justice School) to obtain the most current legal information of value to legal assistance practitioners;

i. Coordinate with the American Bar Association's (ABA) Standing Committee on Legal Assistance for Military Personnel (LAMP) to ensure ABA recognition and support for current issues of military importance, as well as to obtain LAMP recognition of outstanding Marine Corps LAAs and offices;

j. Coordinate and oversee the Regional Legal Assistance Councils (RLACs) and their programs and policies; and

k. Annually visit and evaluate Marine Corps legal assistance programs and providers to ensure quality and compliance with binding policy guidance.

14003. REGIONAL LEGAL ASSISTANCE COUNCILS

1. The delivery of quality legal assistance services is enhanced when all LAAs, active and reserve, communicate with one another regarding trends and developments in law and procedure. This can best be accomplished in a periodic series of meetings that bring together active duty attorneys and Reserve judge advocates that specialize in areas of the law relevant to the delivery of legal assistance.

2. In furtherance of this concept, two Regional Legal Assistance Councils (RLACs) are established and will function as set forth in the following paragraphs.

3. The RLAC, East, shall consist of all LAAs from the legal assistance offices located east of the Mississippi River and shall be chaired by the senior active duty LAA in the region.

4. The RLAC, WestPac, shall consist of all LAAs from the legal assistance offices located west of the Mississippi River and shall be chaired by the senior active duty LAA in the region.

5. Marine Corps Reserve LAAs within the region may participate in activities of the RLAC.

6. Each RLAC shall be co-chaired by a reserve liaison. Each reserve liaison shall:

a. Present seminars at RLAC meetings, as requested by the RLAC.

b. Assist in the development of program improvements.

c. Arrange and schedule regular CLE for legal assistance attorneys located in CONUS.

d. Visit each legal assistance office annually with the Head of JAL, and review the manner in which each office delivers legal assistance to its clients, including:

(1) The nature, extent and types of legal assistance provided;

(2) The condition and adequacy of building and office facilities;

(3) Computer hardware and software;

(4) Library and automated research programs;

(5) Referrals to civilian attorneys;

(6) Difficulties the legal assistance office has in providing quality legal assistance, if any;

(7) Requests or suggestions the legal assistance office has for improving the quality of legal assistance it provides; and

(8) Any other matters or issues the LAAs or the visiting Reservists want to discuss or address, with a view toward improving the delivery of legal assistance to clients.

e. Mentor active duty and Reserve LAAs.

7. The RLACs shall function as follows:

a. The RLACs shall meet, in person if possible, at least every 6 months, to address, at minimum, the following:

(1) Recent trends, developments and problem areas in legal assistance;

(2) Current and planned preventive law programs with recommendations, if any, for action to be taken; and

(3) Recently concluded (and planned) continuing legal education (CLE) programs attended by LAAs, including an objective evaluation of each course attended. Any LAA who has attended a special CLE or training program will brief the other LAAs on the course, summarize its content, and provide copies of pertinent materials. Copies of the summary and materials should be forwarded to JAL.

b. The RLAC chairman shall submit a semi-annual report to JAL, no later than the 30th day after the conclusion of the RLAC meeting.

c. Each RLAC will invite representatives from legal assistance offices from other uniformed services in the region to participate in the RLAC's activities.

14004. ACCEPTANCE AND USE OF VOLUNTARY SERVICES

1. Legal Assistance Offices may recruit and accept services from volunteers. The acceptance and use of such voluntary services must be in accordance with DoD Directive 1100.21, "Voluntary Services in the Department of Defense", March 11, 2002, and any other implementing regulations and procedures established by the Secretary of the Navy.

2. All volunteers shall sign the appropriate part of DD Form 2793, "Volunteer Agreement for Appropriate Activities or Nonappropriated Fund Instrumentalities." The acceptance of volunteer services shall be acknowledged on this document before an individual is allowed to provide volunteer services. A copy of the signed volunteer agreement should be given to the volunteer prior to commencing volunteer services. Part IV shall be completed at the end of the volunteer's service in order to document the dates of the volunteer service. A copy of the completed volunteer agreement shall be given to the volunteer

upon termination of service. Volunteer records shall be retained for 3 years following the termination of volunteer service.

14005. FACILITIES AND RESOURCES

1. LAAs should be provided with individual private offices with full floor-to-ceiling walls to safeguard confidentiality of consultations with clients.

2. Adequate measures and procedures will be established to ensure the security of clients, confidential records, and office personnel and equipment.

3. Client records shall be maintained for the period of time set forth in JAGINST 5801.2.

4. All Marine Corps legal assistance offices shall be provided software from JAL in such areas as estate planning, time and document management, and legal document creation. Upon receipt, legal assistance offices shall fully employ said software.

14006. SERVICES. Marine Corps legal assistance offices will provide, subject to ethical considerations, the services set forth in Section 708 of the JAGMAN, and JAGINST 5801.2, and will abide by the following:

a. Estate Planning

(1) Paralegals and support staff may assist LAAs in the drafting of wills and related instruments; however, absent unusual circumstance, no will should be executed until it is reviewed by the LAA with the client.

(2) Marine Corps legal assistance attorneys are strongly encouraged to draft wills using the Military Testamentary Instruments (MTI) provisions specified in Department of Defense Directive 1350.4 (“Legal Assistance Matters”), whenever possible. Legal Assistance Attorneys should use the SOP in Figure 14-3 when executing wills.

(3) Every effort should be made to advise primary next of kin (PNOK) on probating wills and settling estates of service

members who die while in an active duty status.

(4) In order to minimize hasty preparation and mass will executions, commanders should direct servicemembers to the local legal assistance office during the check-in process to assess their estate planning needs. Mass will executions are discouraged.

(5) Although members of a command may be required to attend estate-planning briefs, and be given the opportunity to obtain a will, commanders should not require personnel to draft or execute a will.

b. Domestic Relations and Family Law

(1) Paralegals and support staff may assist LAAs in the drafting of court pleadings, separation agreements, and related instruments; however, no separation agreement may be executed until it is reviewed by the LAA with the client.

(2) LAAs may "ghost write" *pro se* pleadings if such practices are permissible under local law and applicable ethical rules. If professional rules prevent an LAA from providing specific *pro se* assistance, the LAA may do any of the following: (1) refer the client to an Expanded Legal Assistance Program (ELAP) attorney; (2) seek *pro hac vice* admission into the appropriate court; (3) refer the matter to a locally-licensed LAA or Reserve judge advocate; or (4) contact JAL for further guidance and assistance.

(3) Under no circumstances will a Marine Corps legal assistance office conduct divorce-counseling classes in which clients are grouped together, unless the individual is first advised that the same preliminary information regarding the divorce process may be provided through an alternate private and confidential method, such as include video tapes, CD ROMs, written publications, and other methods.

(4) Separation agreement worksheets that require a client’s signature or initials shall not be used.

c. Taxes

(1) Legal assistance offices will staff and manage a local program that provides seasonal tax preparation and

electronic filing services to eligible clients. Advice will be provided on income, real and personal property tax issues and LAAs will assist with the preparation of Federal and State income tax returns. Advice may be provided on estate, inheritance and gift tax matters, and on appealing tax rulings and other findings based on availability of expertise and resources. Legal assistance offices may refer to the Navy ELF Manual for guidance concerning the establishing and maintaining of electronic filing programs.

(2) LAAs with special tax expertise may be authorized to assist clients with tax audits and filing of petitions with the U.S. Tax Court. The LAA must submit a request, endorsed by the Staff Judge Advocate, to JAL, explaining his/her special expertise and the actions which the LAA seeks to perform. Supplemental requests must be submitted for authorization to perform additional representational acts.

(3) Each legal assistance office will submit a final tax report not later than 1 July in a format prescribed by JAL.

d. Economic and Consumer Affairs. Each legal assistance office will designate a point of contact (POC) to the Federal Trade Commission (FTC). Each POC will forward a completed Application for Access to the Consumer/Military Sentinel Website to JAL, which will forward the application to the FTC. After receiving permission from the FTC, the POC will review this database on a regular basis and disseminate information on current consumer fraud activities to other LAAs and judge advocate personnel. The POC will add to the database any information on consumer fraud activities that occur on or around the local installation.

2. Citizenship and Immigration Services. LAAs shall provide counsel and assistance to Marines in matters regarding applications for naturalization based upon qualifying military service, as set out in 8 U.S.C. §§ 1439-1440, and the U.S. Marine Corps Legal Assistance Guide to Naturalization Applications Based on Qualifying Military Service. The guide is provided at Figure 14-1.

14007. EXTENDED LEGAL ASSISTANCE PROGRAM (ELAP). Supervisory attorneys may start or continue ELAP within their command areas. Supervisory attorneys can restrict ELAP by types of cases or

limit assistance to personnel of specific grades, status or other criteria. Permission to initiate or continue ELAP programs must be requested from CMC (JAL) per the provisions of JAGINST 5801.2, paragraph 8-1.

14008. LEGAL ASSISTANCE OUTREACH SERVICES

1. Independent duty Marines, such as recruiters and those serving on embassy guard duty, often serve at locations without access to legal assistance offices. Because their service is often performed at places far from Marine Corps installations, the need to maintain their morale is of great significance. Every effort will be made to provide these Marines and their dependents quality and timely assistance.

2. When an independent duty Marine or that Marine's dependent requests legal assistance, the LAA will verify eligibility by obtaining the requester's duty assignment, social security number and date of birth. The LAA may presume the independent duty Marine is authorized assistance. If there is a question of eligibility, the LAA may ask for a facsimile copy of the military or dependent identification card or call the Marine's parent command.

3. Typically, legal assistance is not provided over the telephone. However, the special circumstances and conditions of independent duty Marines require a different approach. LAAs may provide legal assistance to independent duty Marines by telephone and, resources permitting, will make use of facsimile, electronic mail and video teleconferencing to expedite the provision of legal services.

4. SJAs at the Marine Corps Recruit Depots should be proactive in making legal assistance available to independent duty Marines by:

a. Providing regular TAD visits to the Recruiting Stations; and

b. Providing classes and written material to recruiters at Recruiting School.

14009. ALTERNATIVE DISPUTE RESOLUTION. Alternative dispute

resolution (including mediation, arbitration, and other alternative dispute resolution services) is a method of settling disputes outside a court setting by using a neutral third party to act as a link between the parties. A neutral third party, by definition, can never have advised or represented either party to the dispute on any matter. Based on the availability of expertise and resources, a SJA may authorize alternative dispute resolution services as part of the command's legal assistance program. Attorneys and other individuals who serve as mediators, arbitrators, or in similar roles, will comply with the ethical standards of the Marine Corps and will use the American Arbitration Association rules as a guideline for arbitration matters.

14010. QUARTERLY REPORTS.

1. Statistical Report: Legal assistance offices shall provide JAL with quarterly reports in the format provided in Figure 14-2. Such reports are due the 15th day after the conclusion of the quarter being reported.

2. Quarterly Briefing Memo: Each legal assistance office should make quarterly report to JAL, due on the date of the Legal Assistance quarterly statistical report. Such reports will be in memorandum format and will summarize legal assistance office challenges, notable legal assistance office successes, and local developments that relate to legal assistance matters and effect service members. Also include copies of articles published in local and national publications, and recommended changes of law.

3. Legal assistance offices will provide prompt written notification to JAL of any of the following:

- A detailed description of substantiated violations by any individual or organization of any applicable law or regulation regarding commercial solicitations aboard Marine Corps installations;

- The basis for and terms of withdrawal of solicitation privileges by installation commanders against any individual or organization for violating such laws or regulations;

- A summary of any matters referred to the regional Armed Forces Disciplinary Control Board, and action taken thereon;

14011. THE COMMANDANT'S AWARD FOR EXCELLENCE IN LEGAL ASSISTANCE (CAELA)

1. The delivery of quality legal assistance services is an essential element of readiness and morale. The purpose of the CAELA is to promote the delivery of quality legal assistance services by recognizing outstanding achievement, effort and innovation in legal assistance. It will serve as the basis for nominations to the ABA LAMP Committee for the Legal Assistance Distinguished Service Award.

2. Award criteria are as follows:

a. A superior legal assistance program worthy of emulation by other legal assistance offices;

b. Exceptional service in the provision of legal assistance services; and

c. Major legal assistance innovation.

3. Nominations for the CAELA shall be submitted no later than 1 December of each year in a format prescribed by JAL.

4. The selection committee chaired by the Deputy SJA to CMC will evaluate each office on the basis of the information contained in the nomination form, the results of site visits, the quality and timeliness of required reports and other submissions, and other relevant information. The report of the selection committee will be forwarded to the SJA to CMC for final approval. Those offices selected to receive the CAELA will be notified not later than 15 February.

5. The nomination forms from the highest-ranking Marine Corps legal assistance offices will be forwarded to the ABA LAMP Committee as the Marine Corps candidates for the Legal Assistance Distinguished Service Award.

14012. Standardized Judge Advocate Resources. Each legal assistance office should forward to JAL a list of internet website addresses useful to legal assistance offices, as well as

resources that will be useful for inclusion in the Legal Assistance Toolkit. JAL compiles, updates and distributes the following resources to Marine Corps Judge Advocate at least once yearly:

1. JAL Bookmarks: Law internet browser bookmarks, including links to Federal, State, and military laws and regulations;

2. USMC Legal Assistance Toolkit: an electronic compilation of files, primers, presentations, templates, forms, and other documents indispensable and helpful for legal assistance and legal awareness judge advocates. Among areas of law that should be included are consumer, family, immigration, tax, pre-deployment, and property law.

14013. LEGAL AWARENESS PROGRAM. Each legal assistance office shall create and maintain an installation "Legal Awareness Program", headed by a designated “Preventive Law Officer”, that offers timely, concise, and educational information to the military community regarding consumer and legal issues relevant to the local active duty community. Topics should include identity theft, unfair and deceptive trade practices, life insurance designations, and other significant legal issues unique to military life.

1. Mission. Each Legal Awareness Program shall be designed to educate the local Marine Corps community on methods of avoiding legal problems. The eligible clientele and covered topics of a program shall correspond to that of a legal assistance program, per JAGINST 5801.2 and this Chapter.

2. Legal Awareness Program Functions.

a. Outreach. Legal Awareness Programs shall distribute to as many eligible legal assistance clients as possible information about legal rights and issues. Legal Awareness Programs shall take steps to promote the existence and location of legal assistance offices and the scope of free legal assistance services. Legal Awareness Programs should also accomplish the following:

i. Legal Advisories: Post advisories on widely available media regarding important legal issues that affect eligible legal assistance clients. Examples of appropriate topics include family,

consumer, estate planning, and insurance law. JAL Advisories shall be widely and immediately publicized to eligible legal assistance clients.

ii. Website: Maintain legal assistance and/or Legal Awareness websites publicly available to eligible legal assistance clients and containing up-to-date and useful legal information.

iii. Education:

1. Law Day: Advance the Legal Awareness Program on "Law Day" which is normally recognized on the first day of May each year. Law Day was established in Public Law 87-20 on April 7, 1961. Program representatives should organize appropriate activities and events for Marines and their families. Other government and private organizations should be sought to participate in events.

2. Command Representatives: Ensure unit commanders, legal officers and Sergeants Major maintain awareness of available legal assistance and Legal Awareness Program services and the current status of such services. Advise commanders of judge advocate availability to present educational/ informational briefs to commanders and Sergeants Major meetings, staff meetings, welcome aboard briefs, and other occasions. Ensure unit commanders understand DoD policy under DoDD 1350.4, *Legal Assistance Matters*, that commanders should urge military personnel to seek legal counsel regarding wills, living wills, advance medical directives, and powers of attorney well before mobilization, deployment, or similar activities.

iv. Pre-Deployment Program: Legal assistance offices shall establish comprehensive programs that prepare eligible legal assistance clients to deploy or mobilize.

1. Pre-Deployment programs should educate on,

among other topics:

a. Servicemembers Civil Relief Act (SCRA);

b. Uniformed Services Employment and Reemployment Rights Act (USERRA);

c. Life insurance (including SGLI) designations;

d. Child and dependent support (including modification prior to deployment);

e. Estate planning;

f. Consumer Law.

v. Articles: Legal Awareness Programs should publish writings on important legal issues on a broad variety of topics, and in a variety of publications. Organizations that normally welcome articles include reserve, retired, family associations or organizations. The following themes should be stressed in every article:

1. The existence of legal issues that affect eligible legal assistance clients;

2. The existence of additional rights or benefits for eligible legal assistance clients;

3. The importance of advance planning of legal matters, particularly with regard to deployment or PCS;

4. The importance of seeking legal advice prior to signing documents or executing waivers;

5. Location, telephone numbers, free services, and office hours of local legal assistance offices.

b. Liaison: Legal assistance offices shall maintain points of contact within their AOR and liaise with, the following organizations in order to further the legal

assistance and Legal Awareness Program's mission:

i. Public Affairs;

ii. Financial Management offices;

iii. Family Services offices;

iv. Armed Forces Disciplinary Control Boards;

v. Base or unit officials responsible for monitoring businesses or services, including insurance agents;

vi. Base and unit commanders;

vii. Military housing/housing referral offices;

viii. Voting Officers;

ix. Federal Trade Commission (at minimum the Division for Planning and Information and the Consumer Sentinel/Military Sentinel);

x. American Bar Association, local, and state bar associations, including the ABA's Legal Assistance for Military Personnel (LAMP) Committee, military law committees and discussion groups;

xi. State Attorneys General;

xii. The National Association of Attorneys General;

xiii. Local courts and administrative hearing departments;

xiv. United States Citizenship and Immigration Services (USCIS) (regional and lower offices only; the Marine Corps Preventive Law Officer maintains the national liaison);

xv. Internal Revenue Service (IRS).

c. Changes of Law. Legal assistance offices shall study the current state of Federal, military, state, and local laws and regulations, shall seek input from legal assistance attorneys in their AOR, and shall identify changes of law

that may benefit eligible legal assistance clients consistent with the provisions of JAGINST 5801.2 and this Chapter.

d. Continuing Legal Education. Preventive Law Officers shall encourage office activities promoting currency of all legal assistance Office judge advocates in recent legal developments pertaining to legal assistance matters.

3. Legal Awareness Program Resources:

a. Legal Assistance Toolkit CD (available through JAL);

b. JAL Advisories (http://www.usmc.mil);

c. TJAGSA CLAMO CD (available through TJAGSA);

d. FTC's Military Sentinel; (http://www.consumer.gov/military)

e. FTC's Consumer Sentinel; http://www.consumer.gov/sentinel)

4. Legal Awareness Program Forms:

a. CMCJAL 1000 SCRA Real Property Lease Termination;

b. CMCJAL 1001 SCRA Power of Attorney;

c. CMCJAL 1003 SCRA Auto Lease Termination;

d. CMCJAL 3001 Legal Readiness Checklist: Deployment and Mobilization.

U.S. MARINE CORPS LEGAL ASSISTANCE

Guide to Military Citizenship Applications Based upon Qualifying Military Service and Posthumous Citizenship Applications

I. Introduction. This Guide outlines the Marine Corps procedures for processing naturalization applications for active duty Marines who submit applications for naturalization based upon qualifying military service, and is intended to supplement the Citizenship and Immigration Service's (CIS) "A Guide to Naturalization" (Form M-476). This document also provides information regarding the Posthumous Citizenship application process. Information and certain forms regarding the citizenship process may be obtained from the CIS website at http://uscis.gov. This Guide does not apply to applications for naturalization that are not based upon qualifying military service.

1. The local Marine Corps Legal Assistance Office (LAO) is the primary source of assistance for Marines who intend to submit citizenship (also known as "naturalization") applications. Accordingly, the LAO should provide Marines with counsel regarding naturalization law and the application process. In addition, the LAO shall provide the applicant with CIS forms, and access to other appropriate resources necessary to complete the application process. With the aid of the CONAD/ADMIN offices, and the Naval Criminal Investigative Service (NCIS), the applicant will complete the application for naturalization and the LAO will forward it to CIS for processing.

2. Comments regarding this Guide should be directed to the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JAL), 3000 Marine Corps Pentagon, Washington, DC 20350-3000. DSN 224-1266, commercial (703) 614-1266.

II. Military Citizenship Application Overview. There are a number of categories of persons who are eligible to apply for United States citizenship. However, the matters discussed this section only apply to the following two categories of applicants:

1. Service in the Armed Forces for 1 year (8 U.S.C. §1439) (section 328 of the INA). This category permits naturalization for persons who have served honorably in the Armed Forces of the United States for 1 year. Such applicants may be naturalized without having to fulfill the continuous residency requirements that apply to other application categories, provided that such applications are filed while the applicant is still in the military service or within six months after termination of such service. The applicant must also be a lawful permanent resident of the United States at the time of the examination, of good moral character, and attached to the principles of the Constitution of the United States. (See 8 U.S.C. § 1439(a) et seq.)

Figure 14-1.--Guide to Naturalization Applications

2. Service in the Armed Forces during military hostilities (8 U.S.C. §1440) (section 329 of the INA). This category authorizes naturalization of persons who have honorably served in an active duty status in the Armed Forces of the United States during periods of military hostilities (including any period as may be designated by the President in an Executive Order pursuant to 8 CFR 329(a) (1994)). In such cases, the applicant must satisfy the permanent residence requirement by either: (1) lawful admission to the United States after enlistment or induction into the Armed Forces of the United States; or (2) at the time of enlistment or reenlistment, the applicant was physically present in the geographical territory of the United States, or other areas as set forth in the statute. (See 8 U.S.C. § 1440(a) et seq.)

3. In both instances, the applicant must submit a completed "Application for Naturalization" (Form N-400), two photographs, a completed "Request for Certification of Military or Naval Service" (Form N-426), and a completed "Biographic Information" (Form G-325B). Once the application and allied documents are mailed and processed, the applicant must have fingerprints taken by CIS, submit to an interview, and pass an English and civics test. Afterwards, if the application for naturalization is granted, the applicant will be scheduled to take the Oath of Allegiance to the United States, and will be given a Certificate of Naturalization.

A. Obtaining the Forms. The LAO should provide the applicant with all of the forms necessary to complete the application process. These forms include Form M-476, which provides information helpful to the applicant in understanding the process. The primary application form is the "Application for Naturalization" (Form N-400). The applicant will also need the "Request for Certification of Military or Naval Service" (Form N-426), and the "Biographic Information" (Form G-325B). These forms should be stocked at the LAO and are available by calling the CIS Forms Line (1-800-870-3676) and requesting the "Military Naturalization Packet". Several forms are available at the CIS website at http://uscis.gov.

B. Completing the Forms. It is vital that all forms be thoroughly completed before submission. Incomplete forms are returned by the CIS, causing substantial delays in the application process.

1. "Application for Naturalization" (Form N-400). Check box "c" in Part 2 of the Form N-400, indicating that the application is on the basis of qualifying military service. Adjacent to box c, the applicant should indicate whether the application is based upon section 328 or 329 of the INA. Note that the answers provided on this application will be reviewed during the applicant's interview.

2. "Request for Certification of Military or Naval Service" (Form N-426). Notwithstanding the notice at the top of the N-426, the applicant must complete page 1 of the N-426 and then must submit the Form N-426 to their S-1 office for completion. Once submitted, the S-1 office will complete page 2 and certify the form. It is essential that page 2 be completed in its entirety. **Note that block 5 of page 2 MUST indicate whether the applicant's service has been under honorable conditions.** The S-1 office will complete and certify the form with a raised seal. The certifying official will be identified as "Personnel Officer." When completed, the form will be

delivered to a LAO representative who will verify the document's authenticity with the Personnel Officer, and will include the document in the application package.

3. "Biographic Information" (Form G-325B). Active duty Marines will complete page 1 of the G-325B, and then submit the form to their Legal Assistance support staff, who will contact the local NCIS office to obtain the background report (DCII report). The DCII report will be attached to the Form G-325B, and returned to the responsible Legal Assistance Attorney. The LAO will obtain any military records referenced in the DCII report, and attach them to the G-325B. In the event the LAO is unable to obtain a background report from the local NCIS office, the completed G-325B will be sent for processing to HQMC (Code JAL). Note, when obtaining the DCII report, you must first run the report under the applicant's name, and then again under the applicant's SSN. Attach both DCII reports to the G-325B.

C. Obtain Two Photographs. Every applicant is required to furnish two identical color photographs of him or herself. The photos must fully comply with the CIS specifications set forth in CIS Form M-378.

D. Collect Necessary Documents. The applicant will need to include copies of several documents with the application. Use the "Document Checklist" (Form M-477), which is contained in Form M-476, to ensure the correct documents are included. Send an English translation with any document that is not already in English. The translation must include a notarized statement from the translator that he or she is competent to translate and that the translation is correct. In the event that the applicant is divorced, a copy of the final divorce decree should also be included in the application package.

E. Fingerprinting. The LAO will schedule the applicant to have fingerprints completed at an Application Support Center (ASC). To do this, the LAO will refer to the CIS website at http://www.ins.usdoj.gov/ http://uscis.gov. (under "forms, fees and fingerprints") for the complete list of ASCs and their hours of operation. The LAO is not required to call the ASC to schedule the appointment. However, the LAO should review the hours of operation listed on the spreadsheet and may schedule the member accordingly. The LAO will then complete the fingerprint notification form located at Enclosure (1) of this Guide. Once completed with the member's correct address, ASC location, and date/time of the appointment, the form will be delivered to the applicant. Note that a copy of the form must be included in the application package to indicate that the applicant was scheduled for fingerprinting. The applicant will take the fingerprint notification form, Permanent Resident Card, and another form of identification (drivers license, passport, state identification card) to the fingerprinting appointment. The second form of identification shall have the applicant's photograph on it.

1. If the applicant is stationed overseas, the military police may take the applicant's fingerprints. Send a completed Fingerprint Card (Form FD-258) with the initial application package to the CIS Lincoln Service Center at the address provided below. Note that the Nebraska Service Center can only accept the FD-258 form. The FD-258 and the cover letter should indicate where the prints were taken abroad. Note that only fingerprints that are taken at a U.S. Embassy,

military installation or Naval Vessel that is underway, will be accepted. CIS recommends that two sets of prints be submitted with the application. The masthead of the FD-258 form must be completed with:

a. All biographical data of the individual;
b. Address data of both the person being printed and the person taking the prints;
c. The A Number of the applicant in the "OCA" and "Miscellaneous MNU" blocks;
d. Signatures of the applicant and the person taking the fingerprints; and
e. "N-400 Military" in the "Reason Printed" block.

F. Mailing the Application Package. The LAO shall review the entire package with the applicant prior to mailing. The applicant should retain a copy of the entire completed package. The application package must also be accompanied by a cover letter from the applicant's Legal Assistance Attorney, indicating the CIS service center at which the applicant would like to be interviewed, and any periods of unavailability. (Note that applicants stationed overseas may have their interviews conducted at various overseas locations supported by CIS. The Department of Defense is preparing regulations that will grant a high priority for leave and transportation aboard DoD aircraft, for naturalization applicants. Check the Marine Corps legal assistance website for up-to-date information on overseas CIS support and new DoD regulations.) The letter will also authenticate the Forms N-426 and G-325B, and shall be personally signed by a representative from the legal assistance office. A sample cover letter is provided at Enclosure (2). **Note that applications that are mailed without the cover letter will not be expedited by CIS.** Regardless of the residence of the applicant, the original application package should be mailed by certified mail, return receipt requested, to:

U.S. Department of Homeland Security
Citizenship and Immigration Services
Nebraska Service Office
P.O. Box 87426
Lincoln, NE 68501-7426

1. If there are problems with any of the documents, CIS will contact the Legal Assistance Policy Branch (JAL), Headquarters, U.S. Marine Corps, to resolve any issues. Once the application is accepted and processed, CIS will send the applicant a letter scheduling the interview.

G. The Interview. CIS will schedule the applicant for an interview. Note that beginning in October 2004, CIS will conduct interviews, oaths and ceremonies at certain overseas locations, to include certain military installations, United States Embassies, and consulates. Information regarding overseas CIS support will be available on the CIS website. Note also that DODD 1327.5 (Leave and Liberty Regulations) allows for the granting of emergency leave, and priority on government transportation for persons applying for citizenship. CIS will send the applicant an interview notice that will tell the date, time, and place of the interview. Applicants will not receive a second notice. If the interview must be rescheduled, applicants should directly contact

the office where the interview is scheduled, by mail, as soon as possible. The letter should explain the circumstances of the request, and ask to reschedule the interview, noting any periods of unavailability. When a new date is set, CIS will send the applicant a new interview notice. Rescheduling an interview may add several months to the naturalization process.

1. To make sure applicants receive the interview notice, CIS must be advised of any address changes. Mail Form AR-11, "Alien's Change of Address Card" to the Nebraska Service Office at the address provided above for this purpose.

2. Applicants should appear at the office where they are to be interviewed in advance of their interview. If applicants fail to appear at their interview without contacting CIS, their cases will be "administratively closed." If this happens and the applicant does not contact CIS within 1 year to reopen the case, the application will be denied.

3. In some cases, CIS may ask the applicant to bring additional documents to the interview. These documents will be listed on the applicant's appointment letter. If the applicant fails to bring the necessary documents, the case may be delayed or denied.

4. During the interview, the applicant's ability to read, write, and speak English will be tested. The applicant will also be given a civics test to test his knowledge and understanding of United States History and Government.

5. At the interview, an CIS officer will place the applicant under oath and then ask about:

a. The applicant's background;

b. Evidence supporting the applicant's case;

c. The applicant's place and length of residence;

d. The applicant's character;

e. The applicant's attachment to the Constitution; and

f. The applicant's willingness to take an Oath of Allegiance to the United States.

6. A representative may accompany the applicant to his interview if a "Notice of Entry of Appearance as Attorney or Representative" (Form G-28) has been mailed to CIS. Also, if the applicant is exempt from the English requirements, he may bring an interpreter to the interview. If the applicant has any disabilities, he may bring a family member or legal guardian with him at the discretion of the CIS officer.

H. Receive a Decision. After the interview, the application for citizenship will be granted, denied, or continued.

Figure 14-1.--Guide to Naturalization Applications

1. Granted. At the end of the interview, CIS may advise the applicant that citizenship will be granted. In some cases, the applicant may be able to complete the oath ceremony the same day as his interview (where available). Otherwise, the applicant will receive a notice advising him of the time and location of the ceremony.

2. Continued. The CIS officer may also "continue" the case. The most common reasons for continuation are: (1) failing the English and civics tests; or (2) failing to provide CIS with required documents. When a case is continued, the applicant will be asked to: (1) come to a second interview, usually within 60-90 days of the first interview; and/or (2) provide additional documents.

3. Denied. If CIS denies the application, the applicant will receive a written notice explaining the reasons therefor. There is an administrative review process for applicants who receive denials. The applicant may request a hearing with an CIS officer if he feels he has been unfairly denied naturalization. The denial letter will explain how to request a hearing and will include the necessary form. The form for filing an appeal is the "Request for Hearing Proceedings Under Section 336 of the Act" (Form N-336).

I. Taking the Oath. If CIS approves the application for naturalization, the applicant must attend a ceremony and take the Oath of Allegiance to the United States. The following are the steps in this process:

1. Establish a ceremony date. CIS will notify the applicant by mail of the time and date of the ceremony. The notice CIS sends is called the "Notice of Naturalization Oath Ceremony" (Form N-445). In some cases, CIS may give the applicant the option to take the Oath on the same day as the interview. If the applicant decides to take a "same day" oath, CIS will ask the applicant to come back to the office later that day. At this time, the applicant will take the Oath and receive a Certificate of Naturalization.

2. Check in at the ceremony. When the applicant arrives at the ceremony, he will be asked to check in with CIS. If the applicant cannot attend the ceremony on the day he is scheduled, he should return the CIS notice (Form N-445) to his local CIS office. The applicant should include a letter explaining why he cannot be at the ceremony and asking CIS to reschedule the ceremony. If more than a day has passed between the applicant's interview and the ceremony, he will need to answer questions regarding his conduct since the interview. These questions will be located on the back of the notice CIS sends the applicant (Form N-445). Some of the questions include "Have you traveled outside the United States?" and "Have you claimed exemption from military service?" The applicant should read the questions carefully and mark his answers before he arrives at the ceremony.

3. Return the applicant's Permanent Resident Card. Applicants are required to return their Permanent Resident Cards to CIS when they check in for their oath ceremony. Applicants will receive their Certificate of Naturalization at the ceremony.

4. Take the Oath. The applicant is not a citizen until he has taken the Oath of Allegiance. The applicant will take the Oath during the ceremony. An official will read each part of the Oath slowly and ask the applicant to repeat his/her words. The Oath can be found in the section titled "Eligibility Requirements" in the Form M-476 "A Guide to Naturalization."

5. Receive Certificate of Naturalization. Once the applicant has taken the Oath, he will receive his Certificate of Naturalization. The applicant may use this document as proof that he is a United States citizen.

6. Applicants should takes steps to obtain a United States passport soon after their naturalization ceremony. A passport serves as evidence of citizenship and is easier to use than a Certificate of Naturalization. Applicants may obtain an application for a passport at their oath ceremony or at most post offices.

III. Posthumous citizenship applications.

1. CIS is the agency responsible for the processing of post humous citizenship (PHC) applications for certain servicemembers. The current requirements for posthumous citizenship applications are set forth in 8 USC 1440, *et seq*, (Section 329A of the INA), and generally provide that such applications may be approved for servicemembers who died of service-related activities, while on active duty during a period of hostilities. The request for citizenship may be made by the next of kin of the decedent, or by the Secretary of Defense, with the consent of the next of kin. Formerly, the conferral of citizenship through this process was honorary only, however, Public Law 108-136, the Military Citizenship Act of 2003, now certain allows non-citizen relatives to receive preferential treatment in adjustment and other immigration and naturalization applications.

2. CIS Form N-644 is used to apply for citizenship on behalf of a deceased servicemember. Although the form calls for the payment of an $80.00 application fee, CIS has permanently waived the fee, without formal request for such a waiver. In addition, all PHC applications must be mailed to the CIS office in Laguna Niguel, California. The application mailing address is:

Citizenship and Immigration Services
California Service Center
P.O. Box 10360
Laguna Niguel, CA 92607-1036

3. Note that section 1703(f) of PL 108-136 now extends the eligibility for naturalization under Section 319(d) to surviving spouses of aliens granted posthumous citizenship under Section 329A. In addition, the law now treats surviving spouses, children and parents of aliens granted posthumous citizenship like immediate relatives and / or adjustment applicants based on such classification. With the exception of benefits explicitly provided by Section 1703, such aliens must satisfy all of the other requirements for immediate relative adjustment of status

applications. There is nothing in Section 1703 that exempts aliens who are applying for immigration benefits under section 1703 from any required background check or other procedural requirements.

Figure 14-1.--Guide to Naturalization Applications

VINNELL CORPORATION
A TRW Company

U.S. Department of Justice
Immigration and Naturalization Service
801 I Street, NW
Suite 900
Washington, DC 20536

Vinnell Corporation
INS Project Office
12900 Federal Systems Park Drive
Mailstop: FP1 / 5133
Fairfax, VA 22033-4411

ASC Communication FY:00-0013
DEC 10 1999

To: INS Regional Directors
INS District Directors
INS Officers in Charge
INS ASC Managers

To: Vinnell Regional Managers
Vinnell Site Supervisors

From: Kathy A. Redman
Acting Associate Commissioner
HQISD

From: Andrew Finlayson
Vinnell ASC Program Manager

Subject: Fingerprint Processing of Military Personnel for Naturalization

Special fingerprinting procedures have been developed to ensure processing of applications for naturalization filed by certain military personnel. Under these procedures, the applicant for naturalization because of military service will be given an appointment notice by the Department of Defense. The appointment notice will contain a specific date and time to appear at a designated ASC or Colo, with photo identification and/or the person's Alien Registration Receipt Card. No advance notice is given to the ASC or Colo. A copy of the Department of Defense Referral Fingerprint Notification to be used for this purpose is attached.

When the person appears and presents his or her appointment notice, the ASC or Colo will take his or her fingerprints and forward them in the usual manner. Thus, the sole aspect of this process that is unusual is the ability of the applicant to appear for fingerprinting without advance notice to the ASC or Colo.

Kathy A. Redman
Acting Associate Commissioner
Immigration Services Division
Field Services Operations

for Andrew Finlayson
Vinnell Program Manager
INS Application Support Center Project

Attachment

Page 1

Figure 14-1.--Guide to Naturalization Applications

006

Fingerprint Notification			NOTICE DATE
CASE TYPE N400 Application for Naturalization			INS A#
APPLICATION NUMBER Department of Defense Referral	RECEIVED DATE	PRIORITY DATE	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS

To process your application, INS must take your fingerprints and have them cleared by the FBI. **PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.** If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. **RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SPECIFIED BELOW OR REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

APPLICATION SUPPORT CENTER **DATE AND TIME OF APPOINTMENT**

PLEASE DISREGARD THIS NOTICE IF:

1. YOU HAVE BEEN FINGERPRINTED WITHIN THE LAST 90 DAYS,
2. YOUR APPLICATION HAS ALREADY BEEN GRANTED, OR
3. YOU WERE UNDER 14 YEARS OF AGE OR OVER 79 (75 FOR NATURALIZATION APPLICANTS) AT THE TIME YOUR APPLICATION WAS FILED.

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. **THIS APPOINTMENT NOTICE** and
2. **PHOTO IDENTIFICATION**. Naturalization applicants must bring their Alien Registration card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

WARNING!

Specific appointment time requests will not be guaranteed. Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

REQUEST FOR RESCHEDULING

I am unable to appear because: _____

Please reschedule my appointment for the next available: ☐ Wednesday afternoon.
☐ Saturday afternoon.

INS cannot guarantee the day preferred, but will do so to the extent possible.
If you have any questions regarding this notice, please call 1-888-557-5398.

APPLICATION NUMBER

Department of Defense Referral

Figure 14-1.--Guide to Naturalization Applications

UNITED STATES MARINE CORPS
Office of the Staff Judge Advocate
Legal Assistance Office
John Quick Road; Building 3025
Marine Corps Base, Quantico, VA 22134

5811
LAO
January 1, 2004

Immigration and Naturalization Service
Nebraska Service Office
P.O. Box 87426
Lincoln, NE 68501-7426

Dear Sir or Madam:

SUBJECT: FACILITATED MILITARY APPLICATION FOR NATURALIZATION FOR SERGEANT JOHN DOE, USMC, (A# 123 45 678)

I write as counsel for Sergeant John Doe, and hereby submit his completed application for naturalization with attachments. Sergeant Smith resides at 100 Main Street, Quantico, Virginia, 22134. His residential phone number is (555) 233-4567, and his e-mail address is doej@emailservice.net. Sergeant Doe prefers to have his interview conducted at the Alexandria CIS office. Please be advised that Sergeant Doe will not be available for this interview between the dates of January 15, 2004 and February 15, 2004.

I certify that the enclosed N-426 and G-325B Forms and any attachments thereto, are accurate and authentic records prepared in the regular course of business, by Department of Defense employees with knowledge or from information compiled by a person with knowledge of the matters set forth therein.

Sincerely,

A. FREHLEY
Captain, U.S. Marine Corps
Legal Assistance Attorney

Enclosures:
1. Completed N-400 form
2. Completed N-426 form
3. Completed G-325B form
4. Two color photographs of Sgt. Smith
5. Completed Fingerprint Notification Form
6. Intentionally omitted
7. Photocopy of (or affidavit of lost) Resident Alien Card
8. (Any other documents required under Form M-477

A legal assistance attorney represents the interests of individual clients, and not those of the United States Government

Figure 14-1.--Guide to Naturalization Applications

LEGAL ASSISTANCE QUARTERLY REPORT

Field Office:	1st QTR OCT-DEC	2nd QTR JAN-MAR	3rd QTR APR-JUN	4th QTR JUL-SEP	TOTAL
SERVICES[1]					
Adoption/Name Change					0
Consumer Protection Law[2]					0
Domestic Relations[3]					0
Immigration[4]					0
Military Rights and Benefits[5]					0
Notarizations					0
Property/Landlord-Tenant					0
Tax[7] (Do not include VITA/ELF)					0
Wills/Estate Planning					0
Other Services[8]					0
TOTAL # OF SERVICES	0	0	0	0	0
NEW CLIENTS[9]					
Active Duty					0
Family Members					0
Retirees					0
Reservist					0
DOD Civilians (Overseas Only)					0
TOTAL # OF NEW CLIENTS	0	0	0	0	0
REPEAT CLIENT VISITS[9]					
Active Duty					0
Family Members					0
Retirees					0
Reservist					0
DOD Civilians (Overseas Only)					0
TOTAL # OF REPEAT CLIENT VISITS	0	0	0	0	0
ELAP CLIENTS					
# of ELAP Clients					0
DOCUMENTS PREPARED[10]					
# of Wills[11]					0
# of Powers of Attorney[6]					0
# of Separation Agreements					0
# of INS Forms N-400 Sent to Lincoln NE					0
# of Other Documents					0
TOTAL # OF DOCUMENTS PREPARED	0	0	0	0	0
PREVENTATIVE LAW					
# of Preventative Law Briefs[12]					0
# of Personnel Briefed					0
# of Preventative Law Publications[13]					0

Figure 14-2.—Legal Assistance Quarterly Report

LEGAL ASSISTANCE QUARTERLY REPORT INSTRUCTIONS

1 Referrals are not services, although they may be the logical conclusion to a consultation. Do not count a referral separately from the appointment. Services can be performed by an attorney or non-attorney. Non-attorney assistance such as performing notarizations, or answering basic legal questions under the supervision of an attorney will be counted under the appropriate service category. Scheduling appointments, taking messages, handing out tax forms and other clerical assistance will not be counted. Telephone calls do not count as services unless they are approved incidents of telephonic legal assistance to remote clients.

2 Consumer protection law includes assistance with respect to a broad range of matters, such as personal contracts, debtor-creditor matters, bankruptcy, automobile repairs, and other consumer protection/law matters.

3 Domestic relations includes divorce, separation, child custody, nonsupport, marital advice, and paternity matters.

4 Immigration includes naturalization and citizenship matters, residency permits, visas, employment eligibility, and other immigration-related matters.

5 Military rights and benefits includes issues not falling under personal representation such as SSCRA and USERRA.

6 Powers of Attorney includes generals, specials, and durable health care.

7 Tax includes tax advice, attorney preparation of tax returns outside of the VITA/ELF program and assistance with other tax matters, such as state tax residency disputes. Do not include VITA/ELF that are reported through the normal Legal Assistance Tax Program Report.

8 "Other services" include all legal assistance which does not fit into one of the delineated categories.

9 A service member/family member/retiree is listed only once as a "new client" per fiscal year by a particular legal assistance office. Once an individual is seen by a legal assistance office that fiscal year, when that individual returns for future services they will be listed as a "repeat client visit". "Repeat Client Visits" are only clients that come in for a scheduled appointment or to receive a listed service. The "service" category captures services provided to "new clients" and "repeat client visits". Remember, when a client comes back for a repeat visit and receives 3 services during that appointment they are only counted as one "repeat client visit" and their services are counted in accordance with the "services" section criteria. Each category of service provided to a client is counted separately. Thus if a client comes in for a POA, a will and divorce advice, count three services. However, for each client visit only one service may be counted in each "service category". Thus a visit for a living will and a will counts as only one service with 2 documents prepared.

10 "Documents Prepared" are final, smooth documents. Do not count drafts (of wills, POAs, etc.), copies, or internal documents (dual rep letters) as "documents prepared". Do not count tax returns done as part of the ELF/VITA program.

11 For each will prepared, there will be either one or two services counted. The first to encompass the entire process of the preparation of the will (intake to smooth will). The second service would be counted, if the legal assistance office executes the will. On the rare occasion when a will is prepared and executed by the LA Office on the same day, count one of the services in "wills/estate planning" and the execution service in "other service".

12 Preventative Law Briefs include general information presentations to educate personnel on personal legal affairs such as squadron or ship visits, predeployment briefs, etc.

13 Preventative Law Pubs include articles and newsletters.

Figure 14-2.—Legal Assistance Quarterly Report

STANDARD OPERATING PROCEDURE FOR EXECUTING WILLS

1. The Testator/Testatrix should read the will and all related documents in their entirety prior to execution. The legal assistance attorney should discuss the will with the Testator/Testatrix, prior to execution, and ensure understanding by the Testator/Testatrix of the effect of each clause of the will. The following steps should be taken, in order, at the execution ceremony:
2. Ensure the presence of the following persons:
    a. Presiding Attorney: the presence of a legal assistance attorney for the entire duration of the will execution is required under 10 U.S.C. §1044d for military testamentary instruments;
    b. Testator/Testatrix;
    c. 2 witnesses:
        i. The witnesses should have no interest, whether vested or contingent, in any property disposed of in the will; they should not be related to the Testator/Testatrix, nor otherwise have any interest in the estate in the event of intestacy.
        ii. The presiding attorney may not act as witness when using a Military Testamentary Document, which accounts for the majority of Legal Assistance wills. 10 U.S.C. §1044d(c)(3);
        iii. Witnesses must be positioned to observe the Testator/Testatrix and his or her actions and signatures;
    d. Notary:
        i. May not be a witness to the will;
        ii. Either a military or civilian notary may be used;
        iii. Will notarize the witness' and Testator/Testatrix' signatures;
        iv. Entries must be made by both Testator/Testatrix and witnesses in the military or civilian notary's notary logbook per the requirements of JAGMAN 0909;
3. The presiding attorney or notary should have the Testator/Testatrix and witnesses produce adequate identification cards for the execution and notarization;
4. The presiding attorney or notary should ask the Testator/Testatrix the questions below entitled "Will Execution Questions";
5. If appropriate responses are received to the questions, the Testator/Testatrix initials and dates all pages of the will in a consistent location on each page.
6. The presiding attorney or notary should ask the witnesses the appropriate questions below entitled "Will Execution Questions";
7. If appropriate responses are received to the questions, the witnesses then initial and date all pages of the will in a consistent location on each page;
8. The witnesses should read and declare aloud that the attestation clause is a true and correct statement;
9. The Testator/Testatrix and witnesses should all read and sign, under oath, the self-proving affidavit, notarized by the presiding attorney or notary. Ensure the witnesses print their name, rank, and duty address next to or below their signatures;
10. Will pages should have previously been numbered consecutively, and after signature all pages should be securely stapled along the top of the document. Once the document is signed and stapled, do not remove the staples.

Figure 14-3.—Will Execution SOP.

WILL EXECUTION QUESTIONS

The presiding attorney should follow the below procedure. When asking the Testator/Testatrix and witnesses questions, the presiding attorney should ensure all responses are audible and verbal, if possible.

1. Ensure the Testator/Testatrix and all witnesses are present, in the same room, during the entire will execution.
2. Administer the oath to the Testator/Testatrix and all witnesses.
3. Ask the Testator/Testatrix:
    a. Are you 18 years of age or older?
    b. Are you of sound and disposing mind and memory?
    c. Do you publish and declare this document to be your last will and testament?
    d. Have you read this will in its entirety, and do you understand its terms?
    e. Do you have any additions or corrections to make to this will?
    f. Does this will dispose of and distribute your property according to your intentions, in the event of your death?
    g. Are you under any coercion, duress, or undue influence in either the preparation or signing of this will?
    h. Are you executing this will voluntarily and of your own free will?
    i. Do you wish these witnesses (state witness names) to witness your signature and execution of this will?
4. Ask the witnesses:
    a. To the best of your knowledge, is the Testator/Testatrix 18 years of age or older?
    b. To the best of your knowledge, is the Testator/Testatrix of sound and disposing mind and memory?
    c. Does the Testator/Testatrix appear to understand the nature of his/her actions?
    d. Does the Testator/Testatrix appear to be acting under duress, coercion, or undue influence?
    e. At the Testator/Testatrix's request, did you in the Testator/Testatrix's presence subscribe your names to this will as attesting witnesses on the date of the will?

Figure 14-3.—Will Execution SOP.

> CHAPTER 15

FINANCIAL SUPPORT OF FAMILY MEMBERS

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CHAPTER 15

FINANCIAL SUPPORT OF FAMILY MEMBERS

15000. SCOPE This chapter establishes Marine Corps policy regarding the treatment of family members of Marines in need of financial support. This chapter is punitive in nature, and violations of this order are punishable under the UCMJ, and may subject the violator to adverse administrative action. The activity responsible for this chapter is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (JAL) (703) 614-1266 / DSN 224-1266.

15001. POLICY

1. The Marine Corps will not serve as a haven for personnel who fail to provide adequate and continuous support to their family members. Marines shall comply fully with the provisions of separation agreements and court orders addressing the support of family members. Absent such agreements or court orders, and conditioned upon a complaint of nonsupport to a commanding officer, the support standards set forth in this chapter shall be enforced. For purposes of this chapter, the phrase "court orders" shall include administrative child support orders and their functional equivalents. For purposes of this chapter, the phrase "commanding officer" means a Special Court Martial Convening Authority or higher.

2. Preferably, the amount of support to be provided to family members should be established by a written agreement between the parties, or be adjudicated in the civilian courts. Nevertheless, because family support issues are closely aligned with readiness, morale, discipline, and the reputation of the service, mandatory interim financial support standards are needed. Assistance in obtaining written support agreements and court orders in these matters is available from local legal assistance offices.

3. Final divorce decrees and written agreements in which spousal support is not awarded or mentioned, or is affirmatively waived, eliminates the obligation to support spouses under this chapter.

4. The obligation to support a biological or adopted minor child under this chapter is not eliminated by a final court order, such as a decree of divorce, or a written agreement, unless the documents specifically negate the obligation to pay child support. The fact that a divorce decree is silent relative to support of a minor child does not effect the obligation of the Marine to provide support for the child under this chapter.

5. The support standards set forth in this chapter apply only to a Marine's spouse, minor biological children and minor adopted children. For purposes of this chapter, "minor" means less than 18 years of age. In addition, all children born in wedlock are presumed to be the biological children of the Marine and the Marine's spouse. The standards set forth herein do not extend to stepchildren or other DoD-recognized dependents of the Marine. There is no duty of support as between active duty military spouses without children. In addition, the application of these standards shall commence only after the commanding officer has received a complaint of nonsupport, and the commanding officer has issued a support order in substantial compliance with the form attached hereto at Figure 15-2.

15002. PUNITIVE PROVISIONS

1. Marines will not violate any of the following:

a. The financial dependent support provisions of a court order.

b. The financial support provisions of a written agreement addressing the issue of dependent support. (Note: a marital settlement agreement worksheet which is used to prepare an agreement does not constitute a written financial support agreement for purposes of this chapter) or

c. If neither a court order nor a written agreement exists, the interim financial support standards of Paragraph 15004, and orders issued thereunder by a commanding officer.

2. This paragraph is punitive in nature. Marines who fail to comply with this paragraph are subject to punishment under the UCMJ, as well as to adverse administrative action.

15003. COMPLAINTS OF INADEQUATE SUPPORT

1. All complaints alleging inadequate support of family members shall be directed to the commanding officer of the Marine concerned. All Marines who receive complaints of inadequate support shall immediately forward the complaint to the commanding officer, and advise the party making the complaint that the commanding officer is the appropriate authority to take action in the matter. In the absence of extraordinary circumstances, the commanding officer will meet with the Marine and take appropriate action under this chapter within 10 working days of receiving the complaint. If the Marine who is the subject of the complaint is not assigned to the command receiving the request for support, the commanding officer will forward it to the commanding officer having authority to take action, and will inform the complaining party of the action taken as soon as possible. If the commanding officer is unable to initiate action within 10 working days, the commanding officer shall so advise the party seeking support.

2. When a complaint alleging inadequate support of family members is received, the commanding officer will inform the Marine about the nature of the complaint and shall encourage the Marine to consult with a legal assistance attorney. After the Marine has had the opportunity to consult with counsel, the commanding officer will then meet with the Marine, and determine the content of an order or warning, if any, to be given to the Marine to foster compliance with this chapter.

3. In instances where a request for support is made for a child born out of wedlock, the Marine shall provide support under this chapter only when paternity is established by court or administrative order or formal written acknowledgement by the Marine. Prior to responding to paternity allegations, the Marine shall be directed to consult with a legal assistance attorney regarding the full consequences of an admission of paternity. Notably, some states hold that an admission of paternity creates a legal presumption that paternity is established, and that based upon such an admission, a court may order the payment of child support.

15004. INTERIM FINANCIAL SUPPORT STANDARDS

1. In cases where the amount of support has not been fixed by

court order or written agreement, and upon a complaint of nonsupport to a commanding officer by or on behalf of a family member entitled to support (as set forth in Paragraph 15001.5), interim support per supported family member shall be the greater of the fixed amount of support reflected in the center column of the chart below, or the pro-rated share of whatever BAH or OHA (Overseas Housing Allowance) to which the Marine is currently entitled, as shown in the chart below, per month. Note that BAH that is credited to the Marine for government housing, but is not actually paid in cash, is not counted for purposes of this chapter. Under no circumstances shall the total amount of support required exceed 1/3 of the Marine's gross military pay, per month. For purposes of this order, gross military pay is defined as the total of all military pay and allowances before taxes or any other deductions. The amount calculated under the chart below is presumed to be the correct amount of support to be paid to a family member. A Support Calculation Worksheet is provided at Figure 15-1.

Total Number of Family Members Entitled to Support	Minimum Amount Of Monthly Support per Requesting Family Member	Share of Monthly BAH/OHA per Requesting Family Member
1	$350	1/2
2	$286	1/3
3	$233	1/4
4	$200	1/5
5	$174	1/6
6 or more	$152	1/7 or etc.

2. In calculating the total number of family members entitled to support, the commanding officer shall count the complaining family member(s) and all other family members as defined in Paragraph 15001.5 that: a) the Marine is supporting under court order, written agreement, or order under this chapter (not party to the complaint of nonsupport); and b) minor biological or adopted children that reside with the Marine whom the Marine is supporting. For example, if the Marine is paying support for a child from a previous marriage, and the current spouse requests support under this chapter, there are two family members in need of support, and the Marine should be ordered to pay the spouse $286.00 or 1/3 of his BAH, per month, whichever is greater (up to 1/3 of his gross military pay).

3. The Marine may request the commanding officer to deviate from the amount of spousal support required under Paragraph 15004.1. If the facts of the particular case are consistent with one of the reasons for modification as set forth in Paragraph 15005.4, the commanding officer may decrease or terminate spousal support to be paid, only after consulting with the appropriate staff judge advocate. However, except for situations described under Paragraph 15005.4d, support for a minor child shall not be decreased from the amount required in Paragraph 15004.1. Financial support established by a commanding officer under this chapter shall continue until such time as a written agreement is reached, a court order is obtained, or the commanding officer modifies or terminates the support order. This scale is not intended for use outside the Marine Corps or as part of any civilian judicial proceeding. Deviation from the amounts provided in Paragraph 15004.1 is not authorized except as provided in Paragraph 15005.4.

15005. MODIFICATION OF INTERIM FINANCIAL SUPPORT REQUIREMENTS

1. A commanding officer has discretion (but is not required) to reduce or eliminate the interim financial support standards under certain circumstances as listed in Paragraph 15005.4, only after consulting with the appropriate staff judge advocate. A commanding officer has no authority to reduce or eliminate the interim financial support standards in any situation not listed in Paragraph 15005.4. Note that while a commanding officer may reduce or in certain cases, completely eliminate a support requirement under this chapter, reduction of support below "BAH diff" may render the Marine ineligible for BAH under applicable regulations. See Department of Defense Financial Management Regulation (DoDFMR), Volume 7A, Paragraph 260406.B for guidance on BAH entitlement.

2. A commanding officer must be satisfied by a preponderance of the evidence that the underlying intent of this chapter, to provide adequate and continuous support to family members, would be furthered before he or she may reduce or eliminate the interim financial support standards established herein. Before granting relief, the commanding officer may attempt to contact the family member requesting support for whatever additional information may be necessary to make an informed decision on the matter.

3. The Marine has the burden of coming forward with sufficient information and documents (for example, receipts, tax returns, pay vouchers, court orders, etc.) to establish a basis for a commanding officer's action under this paragraph.

4. Situations warranting consideration of reduction or elimination of financial support requirements.

a. The gross income of the spouse exceeds the gross military pay of the Marine (including allowances). The income of the non-service member spouse will be based on his or her wages, before deductions are taken for taxes, voluntary allotments, and garnishments, together with income from all other sources, such as interest, dividends, and profits derived from property in that spouse's possession. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children.

b. Interim financial support has been provided to the spouse for a continuous and uninterrupted period of 12 months. A commanding officer may reduce or eliminate the interim financial support requirements to support a spouse if: i) the parties have been separated for 12 months or longer; and ii) the Marine has made the financial support required in Paragraph 15004 for the entire 12 months (including instances where the Marine has voluntarily complied with this Chapter in the absence of a complaint for support to a commanding officer); and iii) the Marine has not acted in any manner to avoid service of process or otherwise to prevent a court from ruling on the issue of support. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children.

c. The Marine has been the victim of a substantiated instance of abuse by a spouse seeking support. A commanding officer may reduce or eliminate the interim financial support requirements to support a spouse if an instance of abuse committed by the complaining spouse against the Marine has been substantiated by either a family advocacy case management team at Level II or higher, or a court as evidenced by a judgment amounting to a conviction, or by issuance of a permanent restraining order (or similar order) against the complaining spouse. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children.

d. The Marine is paying regular and recurring obligations (such as rent or consumer debts) of the family members requesting support of sufficient magnitude and duration as to justify a reduction or elimination of support specified herein. If the commanding officer elects to give credit for such payments, they should be limited to the extent that such payments do not benefit the Marine, and should continue for as long as support is paid under this chapter.

15006. FORM AND TIMING OF FINANCIAL SUPPORT PAYMENTS

1. Unless otherwise required by court order or by written financial support agreement, a financial support payment will be made directly to the family member in one of the following ways:

a. Cash with receipts.

b. Check.

c. Money order.

d. Electronic transfer.

e. Voluntary allotment.

2. Unless otherwise required by a court order or by a written financial support agreement, a financial support payment shall be due on the first day of the month in which the financial support payment pertains.

Support Calculation Worksheet in the case of

_____, USMC

1. Enter the date the complaint was received: _____
   (Refer the Marine to Legal Assistance)

2. Enter the total number of family members entitled to support *(2a-d)*: _____

INCLUDE ALL OF THE FOLLOWING:

a. Non-military spouse requesting support: _____

b. Biological or adopted minor children on whose behalf financial support is requested: _____

c. Family members that reside with the Marine that the Marine supports (i.e., spouse and biological or adopted minor children): _____

d. Family members that do not reside with the Marine that the Marine supports (i.e., spouse and biological or adopted minor children), that the Marine already supports under prior order or written agreement: _____

3. Enter the number of persons requesting support from Lines 2a and 2b above: _____

Figure 15-1.—Support Calculation Worksheet

4. Locate the number from **Step 2** of this Worksheet on the left column of the USMC Support Table. Highlight the other two columns to the right of this number on the same line. Use this line for all support calculations in this case.

USMC SUPPORT TABLE

Total Number of Family Members Entitled to Support	Minimum Amount Of Monthly Support per Requesting Family Member	Share of Monthly BAH/OHA per Requesting Family Member
1	$350	1/2
2	$286	1/3
3	$233	1/4
4	$200	1/5
5	$174	1/6
6 or more	$152	1/7 or etc.

5. Multiply the number in **Step 3** of this Worksheet times the dollar figure in the center column of the USMC Support Table from the line that was selected in Step 4. Enter the amount:

$_____

6. If the Marine receives BAH, multiply the number in **Step 3** of this Worksheet times the fraction in the right column of the USMC Support Table from the line that was selected in Step 4. Multiply the adjusted fraction times the BAH received. Enter the share of BAH for the requesting family members:

$_____

Figure 15-1.—Support Calculation Worksheet

7. Select the larger dollar amounts from Steps 5 and 6. This is the amount of support presumed to be correct under the MCO. The total amount of support for all persons in Step 2 may not exceed 1/3 of the Marine's gross military pay.

$_____

8. The Marine may request reduction of the amount of support calculated under Step 7 only under limited circumstances. Reduction of support is entirely discretionary on the part of the commanding officer. See Paragraph 15005.4d for details.

9. After consulting with the appropriate staff judge advocate, should the commanding officer choose to deviate from the required amount pursuant to Paragraph 15005.4d for a reduction of support, enter the new amount of support due:

$_____

Figure 15-1.—Support Calculation Worksheet

From: Commanding Officer,
To:

Subj: ORDER OF SUPPORT

Ref: (a) MCO P5800.16C (LEGADMINMAN), Chapter 15

1. On _____, this Command received a complaint from _____, alleging that since that time you did not provide an amount of support sufficient for the needs of your family.

2. On _____, you were counseled regarding this matter, and your obligations under the reference. At that time, you were afforded the opportunity to request that the support requirements of the reference be modified, and to provide reasons therefor.

3. Since there is no support agreement or order regarding this matter, you are ordered, per the reference, to pay _____ the sum of $_____ per month, on the first of each month, as support. Support payments will be made by _____. This order will remain in full force and effect until such a support agreement or judicial order is obtained, or unless sooner modified by this Command.

Figure 15-2.—Sample Order of Support Calculation Worksheet

CHAPTER 16

INDEBTEDNESS

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CHAPTER 16

INDEBTEDNESS

16000. SCOPE. This chapter includes policy and responsibilities governing complaints of indebtedness and provides guidance for processing involuntary allotments. Excluded from its provisions are claims for alimony or child support and claims by Federal, State, or Municipal Governments.

16001. POLICY ON INDEBTEDNESS

1. Marines are expected to pay their just financial obligations in a proper and timely manner. A Marine's failure to pay a just financial obligation may result in disciplinary action under the UCMJ or a claim pursuant to UCMJ Article 139. Except as provided in this chapter, the Marine Corps has no legal authority to require Marines to pay a private debt or to divert any part of their pay for its satisfaction.

2. Legal process instituted in civil courts to enforce judgments against Marines for the payment of spousal or child support and for division of marital property (including related attorney fees) is discussed in chapter 15 of this Manual.

16002. COMPLAINTS OF INDEBTEDNESS

1. Whenever possible, indebtedness disputes should be resolved through amicable means. This paragraph provides policies for processing complaints of indebtedness (not involuntary allotments).

2. The processing of complaints of indebtedness will not be extended to those who have not made a bona fide effort to collect the debt directly from the Marine, or to those whose claims are patently false and misleading.

3. Most States have enacted laws that prohibit creditors from contacting a debtor's employer with regard to alleged indebtedness and from communicating facts concerning indebtedness to the employer, unless certain conditions are met. The conditions that must be met to remove this prohibition generally include reduction of a debt to judgment or obtaining written permission of the debtor. In States having such laws, the processing of complaints of indebtedness will not be extended to those creditors who are in violation of State law. Commanders may advise creditors that this policy has been established because it is the general policy of the military services to comply

with State law, when that law does not infringe upon significant military interests. This policy will govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice will be initiated in any State enacting a similar practice with respect to debt collection.

4. "The Fair Debt Collection Practices Act" (15 U.S.C. § 1692 et seq.) regulates certain activities of those who regularly collect debts for others (debt collectors) as distinguished from creditors who collect their own debts. This law prohibits debt collectors from using any means of interstate commerce, such as the mail, to contact a debtor's employer (except for the purpose of confirming or correcting information concerning the debtor's location) unless the debt collector is acting with the debtor's consent or is in possession of a valid court order or judgment. Unless the debtor has given permission, such contacts may not contain any language to indicate that the inquiry is from a debt collection agency or that the purpose of the inquiry relates to collection of a debt. The processing of claims of indebtedness will not be extended to those debt collectors who are in violation of this Federal law.

5. The "Truth in Lending Act" (15 U.S.C. § 1601 et seq.) prescribes the general disclosure requirements which must be met by those offering or extending consumer credit, and Regulation Z (12 C.F.R. § 226 et seq.) prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal requirements, State regulations apply to credit transactions when the Federal Reserve Board has determined that the State regulations impose substantially similar requirements and provide adequate enforcement measures. Commanders should consult with the staff judge advocate to determine whether Federal or State laws and regulations apply.

6. Paragraph 16002.3 shall not apply to credit unions serving DON personnel as set forth in SECNAVINST 5381.5_, or to those similarly serving other DoD personnel. Commanders will provide debt processing assistance to such credit unions to the extent permitted under the Privacy Act of 1974 (5 U.S.C. § 552a). Credit unions may bring delinquent loans or dishonored checks to the attention of a commander, or designee, for such assistance (32 C.F.R. § 230).

7. Commanders are urged to contact the local staff judge advocate for assistance with regard to any correspondence about which there is any uncertainty.

8. Courtesy. CMC has specifically directed that replies to inquiries, verbal or written, must be temperate and courteous in tone.

16003. PROCESSING COMPLAINTS OF INDEBTEDNESS

1. It is incumbent on those submitting complaints of indebtedness to show that the disclosure requirements of Section 125 of the "Truth in Lending Act" and Regulation Z have been met and to show compliance with the standards of fairness (Figure 16-1).

2. Creditors subject to Regulation Z, and assignees claiming there under, shall submit with their request for debt processing assistance an executed copy of the Certificate of Compliance (Figure 16-2), or other evidence of compliance, and a true copy of the general and specific disclosures provided the military member as required by the "Truth in Lending Act." Requests that do not meet these requirements will be returned to the claimant without action.

3. A creditor not subject to Regulation Z, such as a public utility company, shall submit with the request a certification that no interest, finance charge, or other fee is in excess of that permitted by law of the State in which the obligation was incurred.

4. A foreign-owned company having debt complaints shall submit with its request a true copy of the terms of the debt (English translation) and shall certify that it has subscribed to the standards of fairness.

5. Commanders will process complaints of indebtedness that meet the requirements of this chapter. "Processed" means that the command will:

a. Review all available facts surrounding the transaction forming the basis of the complaint, including the Marine's legal rights and obligations, and any defenses or counterclaims the Marine may have.

b. Advise the Marine that just financial obligations are expected to be paid in a proper and timely manner; what the Marine should do to comply with that policy; that financial and legal counseling services are available to assist in resolving indebtedness; and that failure to pay a just debt may result in the creditor obtaining a judgment from a court that could form the basis for collection of pay from the Marine pursuant to an involuntary allotment. A "just financial obligation" is defined as a legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment that conforms to the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended (50 U.S.C. § appendix sections 501-591).

c. If a Marine acknowledges a debt as the result of creditor contact with the command, advise the Marine that assistance and counseling are available from the on-base military banking office, the

credit union serving the military field membership, and the local legal assistance office.

d. Advise the creditor of those aspects of Marine Corps policy contained in paragraph 16001 which are pertinent to the claim in question, and that the Marine concerned has been counseled concerning the obligations with respect to the claim. The commander's response will not undertake to arbitrate any disputed debt, or to admit or deny the validity of the claim. Under no circumstances will the response indicate whether any action has been taken against the Marine as a result of the complaint. (See figure 16-3)

6. Indebtedness complaints that fail to meet the requirements of this chapter shall be returned to the creditor, using figure 16-4 as a format, with an explanation of why the complaint was not processed.

7. When a creditor, having been notified of the requirements of this chapter, refuses or repeatedly fails to comply with them or, regardless of the merits of the claim, clearly has shown that an attempt is being made to make unreasonable use of the processing privilege, commanders are authorized to deny the creditor any processing of the claim. In such a case, a letter following the format contained in figure 16-5 should be used. Commanders should consult with the staff judge advocate when this action is contemplated.

8. If a complaint is received alleging indebtedness of a Marine no longer a member of the command, it will be forwarded to the Marine's new command. If the individual has been separated from the Marine Corps, the correspondence will be returned to the sender so informing the party. The creditor may be informed of the Marine's new military address but in no case shall the permanent (home) mailing address be disclosed, except as may otherwise be authorized under the Freedom of Information Act or Privacy Act of 1974. (See figure 16-6)

16004. <u>INVOLUNTARY ALLOTMENT OF PAY FOR COMMERCIAL DEBTS</u>

1. The pay of active duty Marines is subject to involuntary allotment to satisfy a judgment for a commercial debt (5 U.S.C. § 5520a(k) (1994)). Detailed guidance is found in DoD Directive 1344.9_ and DoD Instruction 1344.12_.

2. Generally, creditors may collect the lesser of 25 percent of a debtor's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law. For further procedures, see DoD Financial Management Regulation, Volume 7A, section 5003.

3. Creditors must comply with the SSCRA and apply to the Defense Finance and Accounting Service (DFAS) to initiate action to obtain an involuntary allotment. DFAS will forward pertinent information to the debtor and his/her commanding officer, giving them advance notice and an opportunity to respond. For further guidance see DoD Instruction 1344.12_.

4. All applications from creditors seeking to enforce a court-ordered judgment must be sent to:

Defense Finance and Accounting Service
Cleveland Center, Code L
P.O. Box 998002
Cleveland, OH 44199-8002

16005. INVOLUNTARY ALLOTMENT OF PAY FOR DELINQUENT TRAVEL CHARGE CARD DEBT

1. Under the provisions of the “Travel and Transportation Reform Act of 1998” (P.L. 105-264, 5 U.S.C. section 5701 note) heads of agencies may, upon written request of a federal contractor, collect by involuntary allotment any undisputed amount of funds the employee owes to the travel charge card contractor that are delinquent.

2. The due process procedures applicable to military members are exactly the same as for civilian employees of the Department. Therefore, salary offset for a military member’s undisputed delinquent travel charge card debt shall follow the procedures contained in Volume 8, Chapter 8, subparagraph 080602 of the DoD Financial Management Regulation. Pay and allotment procedures are as provided in Volume 7A, Chapter 43 of the DoD Financial Management Regulation.

3. The amount deducted in connection with respect to a pay period may not exceed fifteen (15) percent of the disposable pay for that pay period, except that a greater percentage may be deducted upon the written consent of the employee.

4. After undisputed debts become 90 days delinquent, the travel charge card contractor shall send a 90-day demand letter to the debtor which shall include all due process requirements for initiating salary offset. At a minimum, the letter will include:

a. The debtor’s name and travel charge card account number;

b. The amount of debt, itemized by purchase, representing undisputed amounts owed on the travel charge card, including any late

fees. No interest will accrue on amounts presented for collection, although late fees may accrue;

c. Copies of monthly statements showing the amount was properly billed to the employee; and

d. A contact at the travel charge card contractor with information to allow the employee an opportunity to make a written agreement to repay the debt.

5. If the debt is not disputed, paid, or arrangements made for an installment agreement within the 30-day period following the final debt letter, the travel charge card contractor may request initiation of the salary offset process. The travel charge card contractor shall forward delinquent debts to the Salary Offset Project Office (Defense Finance and Accounting Service-AHADC/CL).

6. Any inquiries or disputes regarding the debt and the 90-day demand notice, which are received by the travel charge card contractor prior to forwarding the debt to DFAS for collection, shall be handled and resolved by the travel charge card contractor. If the debtor wants to negotiate an installment agreement prior to the referral of the debt for salary offset, any such agreement shall be made with the travel charge card contractor.

7. If the debtor is not satisfied with the travel charge card contractor’s disposition of the dispute, he or she may submit a petition for a debt hearing. Petitions to (1) contest the validity of a debt, (2) contest the amount of a debt, or (3) contest the government’s proposed offset schedule, shall be forwarded to the DFAS Debt and Claims Management Directorate (ATTN: Defense Finance and Accounting Service-POCC/DE). Upon receipt of a petition for hearing, the Defense Finance and Accounting Service Debt and Claims Management Directorate immediately shall direct the travel charge card contractor and/or the Salary Offset Project Office to suspend the debt until a hearing is completed.

16006. INDOCTRINATION AND COUNSELING

1. The responsibility to indoctrinate and counsel Marines is a basic precept of military leadership. It is the nondelegable responsibility of command, at every echelon, to ensure that Marines are indoctrinated and counseled concerning indebtedness and to ensure that prompt, effective, corrective action is taken to reduce, insofar as possible, the number of complaints of indebtedness concerning Marines.

2. Such indoctrination and counseling should include: the pitfalls of installment buying; incurring debts beyond the capacity to pay; the

necessity for liquidating debts in a timely manner; information regarding the need for a full disclosure of the terms of the agreement; how finance and interest rates are quoted and computed; the standards of fairness which should be observed; the forms available for this purpose; and the availability of offices for advice and assistance.

3. Commanders will take appropriate punitive, nonpunitive, and/or administrative action against Marines who fail to meet their just financial obligations in a proper and timely manner. Additionally, commanders are reminded that these matters should be appropriately reflected in evaluating the conduct and performance of Marines of all grades.

STANDARDS OF FAIRNESS

1. In the United States, no finance charge contracted for, made, or received under any contract shall be in excess of the charge that could be made for such contract under the law of the place in which the contract is signed by the military member.

a. In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

b. The Department of Defense will establish interest rates and service charges applicable to overseas military banking facilities.

2. No contract or loan agreement shall provide for an attorney's fee in the event of default, unless suit is filed. In that event, the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fee shall be authorized if the attorney is a salaried employee of the holder of the obligation.

3. In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense, or under conditions where reasonable inquiry would have apprised the holder of this fact.

4. The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders, and if the military member notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

5. No late charge shall be made in excess of five percent of the late payment, or $5, whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed but payment of the allotment has been delayed. Overseas banking facilities are a matter of contract with the Department of Defense.

6. The obligation may be paid in full at any time, or through accelerated payments of any amount. There shall be no penalty for

Figure 16-l.--Standards of Fairness.

prepayment and, in the event of prepayment, that portion of the finance charges which have inured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract, and only the prorated amount to the date of prepayment shall be due. As an alternative, the sum of the digits method (called the Rule of "78's") may be used. Under this formula for crediting unearned interest, multiply the number of months in advance of the due date that the payment is made by the amount of interest that would be made on a payment one month in advance of the due date. Interest on a payment one month in advance of the due date is 1/78 of the total annual interest. For example, a payment made five months in advance of the due date would be credited with five times the interest of a payment one month in advance of the due date (5/78's of the total interest due).

7. If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

8. If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the laws of the State in which the security is repossessed will govern the repossession and resale.

10. A contract for personal goods and services may be terminated at any time before delivery of the goods or services, without charge to the purchaser. However, if goods made to the special order of the purchaser result in pre-production costs, or require preparation for delivery, such additional costs will be listed in the order form or contract.

a. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as the undelivered portion.

b. The purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by the Truth in Lending Act (Public Law 90-321) and Federal Reserve Board Regulation Z.)

CERTIFICATE OF COMPLIANCE

I certify that the_____, upon
(name of creditor)
extending credit to _____on _____,
(name of obligor) (date)
complied with the full disclosure requirements of the Truth in Lending Act and Regulation Z, and with the Fair Debt Collection Practices Act (or the laws and regulations of the State of_____), and that the attached statement is a true copy of the general and specific disclosures provided the obligor as required by law.

I further certify that the standards of fairness have been applied to the consumer credit transaction to which this form refers. (If the unpaid balance has been adjusted as a consequence, the specific adjustments in the finance charge and the annual percentage rate should be set forth below.)

ADJUSTMENTS:

_____
(Date of certification)

_____
(Signature of creditor or authorized representative)

_____
(Street)

_____
(City, State and ZIP Code)

Figure 16-2.--Certificate of Compliance.

HEADING

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Receipt of your letter alleging indebtedness of _____ is acknowledged. The matter has been brought to his/her attention and s/he has been advised to communicate with you setting forth his/her intentions in the matter.

The Marine Corps expects its members to meet their just financial obligations. The Marine Corps, however, has no authority to compel any payment, except in the case of State court garnishment proceedings. Such payments are the individual responsibility of _____, and any action to enforce payment would be a matter for civil court.

Section 5520a of title 5, United States Code, provides that a servicemember's pay is subject to legal process initiated to enforce satisfaction of a legal debt. Such action, however, requires final judgment of a court of competent jurisdiction directing the Marine Corps to withhold an amount from the pay of _____ and make payment to _____.

Unless this matter can be resolved satisfactorily by direct correspondence with _____, the appropriate forum for settlement is a civil court. Any action to enforce a valid court-ordered judgment must be sent to:

Defense Finance and Accounting Service
Cleveland Center, Code L
P.O. Box 998002
Cleveland, OH 44199-8002

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Figure 16-3.--Standard Form for Commander's Reply to Complainant Alleging Indebtedness of a Member of the Command.

HEADING

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Your letter alleging indebtedness of Sergeant J. Marine Leatherneck, Jr., U.S. Marine Corps, is returned. Your letter does not indicate that the requirements prescribed by the Secretary of Defense and promulgated in 44 Federal Register 31014 and 32 Code of Federal Regulations 43A, have been complied with, in that _____.

I have enclosed an excerpt of the cited directive.

If you will provide me, at the above address, the necessary information and certification, I shall proceed with those measures that are authorized by the Secretary of Defense.

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Encl:
(1) Your letter
(2) Standards of Fairness, Full Disclosure and Certificate of Compliance

NOTES:

1. In the first paragraph, briefly set out the deficiencies and the method by which they may be corrected.

2. Enclosure (2) need not be furnished to large commercial users on a recurring basis.

Figure 16-4.--Standard Form For Commander's Reply to Complainant Not Complying with Current Regulations.

HEADING

_____
(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Receipt of your letter alleging indebtedness of Sergeant J. Marine Leatherneck, Jr., U.S. Marine Corps, is acknowledged.

(As this individual has been separated from the U.S. Marine Corps, your letter is returned without action) (_____ has been reassigned to _____. Your letter has been forwarded to his new commanding officer. Any further correspondence should be addressed to that organization.)

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Encl:
(1) Your letter (if appropriate)

Figure 16-5.--Standard Form for Commander's Reply to Complainant Alleging Indebtedness of a Person not a Member of the Command.

HEADING

_____
(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Re: Sergeant J. Marine Leatherneck Jr., U.S. Marine Corps

Gentlemen:

Your claim will not be processed because of your (repeated failure) (refusal) to comply with the provisions of regulations published regarding the processing of a claim.

or

Your claim will not be processed because it is my opinion that you are attempting to make an unreasonable use of the debt processing privilege.

All further correspondence regarding this matter will be returned without action.

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Note: Prior to sending this type of reply, consult with the staff judge advocate.

Figure 16-6.--Standard Form for Commander's Reply to Complainant Denying Processing of Claim for Abuse of Processing Privilege.

CHAPTER 17

LAW LIBRARIES

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CHAPTER 17

LAW LIBRARIES

17000. Purpose. To set standards for Marine Corps law libraries.

17001. Background. Judge advocates must have access to adequate research facilities to provide competent counsel. To ensure that each judge advocate has the required research materials, the Staff Judge Advocate to the Commandant (CMC (JA)) created minimum standards for all Marine Corps law libraries. A core law library is maintained and funded for each Marine legal office by CMC (JA). Requests for materials not described in this chapter may be submitted to CMC (JAI) or purchased locally.

17002. Application. These standards apply to all law libraries used by judge advocates under the control of the United States Marine Corps.

17003. Action. The standard list identifies the minimum requirements for each Marine Corps field law library. This list will be reviewed and updated periodically by CMC (JAI). Field offices should submit recommendations to add or delete items on the standard list to CMC (JAI).

17004. Law Library Manager Responsibilities. Each office should designate a library manager. The library manager is responsible for receipt and control of law library materials, cataloging and shelving of books and updates, tracking loans, and ensuring the library is in good order. Each manager is responsible for updating the library database at http://sja.hqmc.usmc.mil as the research materials are received. Requests for additional materials should also be made via the on-line library database. The manager is also responsible for notifying the on-line research representative of personnel changes for issuing or deactivating passwords and tracking the on-line research usage by that office's personnel via the on-line database at http://sja.hqmc.usmc.mil/JAI/database/lexis_lookup.asp. The library manager will conduct an annual inventory of the library during August and submit to CMC (JAI) by 1 September to assist in making the following years' purchases.

17005. Standard Lists For USMC Law Libraries

1. On-line research providers or similar works by alternate publishers may be substituted if they are adequate as reference materials.

2. All works shall be maintained in the most current version available.

17006. TRIAL AND DEFENSE COUNSEL. Judge advocates appearing in courts-martial shall be furnished the following research materials:

Manual for Courts-Martial
Navy-Marine Corps Trial Judiciary Trial Guides
Military Judges Bench Book
Military Rules of Evidence Manual
Evidentiary Foundations

17007. DEPLOYABLE LAW LIBRARY STANDARD. Each deployable law library will contain the items listed below and in paragraph 17006 as well as provide each judge advocate access to on-line research materials:

U.S. Navy Regulations
Title 10, U.S.C.
Soldiers' and Sailors' Civil Relief Act
AOR SOFAs
Selected Problems in Law of War, Army Training Circular 27-10-1
Operational Law Handbook
FM 19-40, EPWS, Civilian Interns & Detained Personnel
FM 27-2, Your Conduct in Combat
FM 27-10, Law of Land Warfare
FM 41-10, Civil Affairs Operations
FM 41-5, Joint Manual for Civil Affairs
Country Studies
AFP 110-20
NWP 1-14M Commanders Handbook on the Law of Naval Operations
JAGINST 5800.7C (JAGMAN)
MCO P5800.16A (LEGADMINMAN)
MCO 1070.12J (IRAM)
MCO P1900.16E (MARCORSEPMAN)
NAVPERS 15560C (MILPERSMAN)
DoDDir 5515.8 (Single Service Claims Responsibility)
MCO P4400.150E (Consumer Level Supply Manual)
SECNAVINST 1920.6B (Administrative Separation of Officers)
CompGen Vol V (Paying Agent)
JAGINST 5890.1 (Administrative Processing and Consideration of Claims)

17008. Station or Base Library Standards. Station and base libraries will maintain all items listed in paragraphs 17006 and 17007 as well as the following:

1. Federal and Criminal Materials

Military Justice Reporter
Military Justice Digest
U.S. Code
Code of Federal Regulations
Service Law Reviews
Federal Register
Military Criminal Justice Practice & Procedure
Court-Martial Procedure
Prosecution and Defense of Sex Cases
Federal Criminal Code and Rules

2. Legal Assistance

State Statutes
Federal Tax Materials
Consumer Credit Law Handbook
Immigration Law and Procedure Handbook
Wills Handbook
Veterans' Benefits Guide
Adoption Law Handbook
Family Law Guide (TJAGSA)
Soldiers and Sailors Civil Relief Guide (TJAGSA)
Uniformed Services Former Spouses Protection Act Guide (TJAGSA)
Wills Guide (TJAGSA)
Income Tax Assistance Guide (TJAGSA)

3. General Materials

Department of Justice FOIA Handbook
JA Deskbook 234 Environmental Handbook (TJAGSA)
JA Deskbook 210 Law of Federal Employment (TJAGSA)
Uniform Guide to Citations (Bluebook)
Law Dictionary
DSM-IV

17009. Information Technology

All judge advocates must have access to information technology assets capable of accessing on-line legal research databases.

CHAPTER 18

STENOTYPE PROGRAM

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CHAPTER 18

STENOTYPE PROGRAM

18000. Scope. To set forth information, guidance, and instructions for administering the Marine Corps Stenotype Court-Martial Reporter Program.

18001. Background

1. Enlisted members of the Marine Corps, while continuing to draw full pay and allowances may, upon application and selection, be ordered as students to selected civilian schools located in the United States for training in machine shorthand (stenotype) at Government expense.

2. Satisfactory completion of the stenotype course leads to designation Legal Services Reporter (Stenotype) (MOS 4429).

18002. Selection. A Marine Corps bulletin in the 1510 series announcing the stenotype program and soliciting applications from volunteers from all enlisted occupational fields will be published annually. Upon receipt of all applications, a selection board will be convened by CMC (JA) to consider the applications and to select those for participation in the program.

18003. Qualifications. An applicant for the program must possess the following basic qualifications:

1. Be a citizen of the United States;

2. Be a high school graduate;

3. Be a corporal or sergeant at the time of application;

4. Be able to type a minimum of 60 words per minute on a 5-minute typing test;

5. Possess minimum Clerical (CL) and General Technical (GT) scores of 110 each;

6. Have served on continuous active duty for not less than 36 months; and

7. Have sufficient time to complete a 4-year obligated service requirement, following course completion, prior to reaching service limits.

8. Have a minimum of 1 year at a current CONUS duty station at the time of application submission deadline, except for a first term Marine reenlisting less than 90 days prior to the expiration of service. Marines in Western Pacific commands or on deployment who are selected will be ordered to report for schooling after their normal rotation.

18004. Applications. Figure 18-1 provides detailed instructions for completing applications for the program.

18005. Obligation upon Acceptance

1. A minimum 6-year active service obligation is required for enrollment in this program. Prior to acceptance of orders and prior to actual transfer for enrollment in the stenotype course, selectees must reenlist for a sufficient period of time to meet this minimum obligated service requirement. Such reenlistment must be in the Marine's current MOS, and the Marine is not eligible for any bonus in MOS 4429, or other MOS, under this extension or reenlistment.

2. Termination from stenotype school, for any reason, at any time prior to normal completion of the scheduled course will not negate the aforementioned 6-year active service obligation.

18006. Duration of the Stenotype Course. This course normally takes eight academic quarters (24 months) to complete. Participants are, however, authorized to remain in a student status for up to 27 months while undergoing training. Student status begins on the date classes start during the year for which selected.

18007. General Instructions

1. Upon acceptance into this program, and within a reasonable time before classes are to begin, selectees will be transferred by permanent change of station orders to Company A, Headquarters Battalion, HQMC. At the same time, selectees' primary MOS will be changed to Basic Legal Services Marine (MOS 4400) and the former primary MOS will be assigned as the first additional MOS. At all times while enrolled in stenotype school, students are under command of the Commanding Officer, Company A. Daily operational control of the Marine stenotype students vests with CMC (JA-3).

a. During the entire course of instruction, the Marine's primary duty is that of a stenotype student.

b. The Commanding Officer, Company A and CMC (AR) shall not require the stenotype student's participation in command functions;

e.g., Bachelor Enlisted Quarters/HQMC Duty NCO/Assistant Duty NCO, physical fitness test (PFT) monitors, parades, ceremonies, color guards, etc., with the exception of performing the semiannual PFT and the annual Battle Skills Training/Essential Subjects Performance Test.

c. While in this program, enlisted Marine stenotype students are representatives of the Marine Corps. Their conduct, personal appearance, demeanor, life style, and activities as students and citizens reflect not only upon themselves but upon the Marine Corps as well. Each Marine must project an image in both the civilian and military communities which is in keeping with the highest traditions of the Marine Corps. Although civilian clothing may be worn while attending school, Marine Corps grooming standards shall be adhered to at all times. Failure to adhere to these standards may result in removal from the program, in addition to other appropriate administrative or disciplinary actions.

2. A Marine's eligibility for assignment to Government quarters in the Washington, DC area and entitlement to use of exchanges, commissaries, medical, and dental facilities are not affected by participation in this program.

18008. TERMINATION FROM THE STENOTYPE PROGRAM

1. Prior to normal completion of the scheduled stenotype course, a Marine may be terminated from the program by CMC (JA) for deficiency in academic performance, machine shorthand writing skills, conduct, weight control assignment, or for other good cause.

a. Deficiency in academic performance shall include, but is not limited to, receipt of one or more failing grades in required academic subjects.

b. Deficiency in machine shorthand writing skills shall include, but is not limited to, lack of satisfactory progress in attaining the various writing speed levels, and/or inability to complete the course of instruction within the regularly scheduled time.

c. Deficiency in conduct shall include, but is not limited to, conviction by court-martial or civilian court, nonjudicial punishment, or other behavior customarily recognized by the Marine Corps as inconsistent with the high standards of conduct and performance of enlisted Marines and/or the professional standards expected of enlisted legal services personnel.

2. Before a Marine may be terminated from the program, the Marine will be notified in writing of the grounds for termination, and shall be afforded an opportunity to make a written reply within 5 working days of receipt of the notice. Such reply, if made, shall be considered by CMC (JA) in determining whether the Marine shall be

dropped from the program. The grounds for the final decision shall be set forth in writing and a copy thereof provided to the Marine concerned.

3. Marines terminated early from this program will normally be reassigned their former primary MOS, and be assigned to a duty station and billet consistent with the needs of the Marine Corps.

APPLICATION INSTRUCTIONS

1. Form and Content. Applications shall be submitted on the Administrative Action Form, NAVMC 10274, via the chain of command, to CMC (JA-3). See figure 18-2. Applications must contain the following:

a. Personal information regarding the basic qualifications listed in paragraph 18003. Waivers of any of the basic qualifications may be requested, and will be considered on a case-by-case basis.

b. As enclosures:

(1) Written results of an interview by a stenotype reporter (MOS 4429), if available at the command. A Legal Services Chief (MOS 4421) or a Legal Administrative Officer (MOS 4430) may conduct this interview if a stenotype reporter is not available. The interview must address matters concerning the applicant's self-motivation, maturity, potential for successful completion of the course, and the applicant's full understanding of all aspects of the program.

(2) An official photograph as prescribed by MCO P1070.12J (IRAM).

(3) A signed and witnessed agreement as contained in figure 18-2. These forms may be locally reproduced.

c. Current PFT score to include height, weight and date of PFT.

d. DSN/commercial telephone number where applicant can be reached during normal working hours.

e. Information concerning any musical instrument background to include length and type of formal training.

f. Information concerning receipt of a selective reenlistment bonus for the current enlistment.

g. If stationed overseas, rotation tour date.

2. Command Endorsement. The forwarding endorsement shall certify that the commander has screened applicants to ensure that they:

a. Are financially secure;

b. Are physically and mentally capable of completing this course of instruction, in a civilian environment, without the normal Marine Corps supervision;

Figure 18-1.--Instructions for Submitting Applications for the Stenotype Program.

c. Are within Marine Corps weight/body fat standards; and

d. Have completed all required military training prior to transfer.

3. General Information

a. All applications must be received at HQMC on or before the deadline for submission as set forth in the annual Marine Corps bulletin in the 1510 series announcing the program. Applications received after this deadline will not be considered.

b. Letters of recommendation are unnecessary and are not desired.

c. Upon receipt of each application and initial screening for eligibility, a battery of tests to be administered to applicants will be forwarded to designated testing officers. These tests consist of typing, grammar, vocabulary, punctuation, spelling, effective expression, vowel recognition, reading rate and reading comprehension. The scores achieved on these tests will assist in the selection of those applicants best qualified.

Figure 18-1.--Instructions for Submitting Applications for the Stenotype Program--Continued.

AGREEMENT FOR STENOTYPE PROGRAM

1. I, the undersigned, certify that I have read and understand chapter 18 of MCO P5800.16A (LEGADMINMAN) which governs the administration of the Marine Corps Stenotype Program, and am fully aware of all provisions of that chapter and their effect upon me if accepted for the program.

2. In consideration of being allowed to attend stenotype school at Government expense and qualify for designation as a Legal Services Reporter (Stenotype) (MOS 4429), I agree to the following:

FIRST: To comply will all requirements of LEGADMINMAN, chapter 18, while a stenotype student.

SECOND: If selected to attend stenotype school, upon acceptance of orders and prior to actual transfer for enrollment in the school, to reenlist for a sufficient period of time to meet the minimum 6-year active service obligation requirement. Such reenlistment is to be in my current MOS and I am not eligible for any bonus in MOS 4429, or other MOS, under this extension or reenlistment.

THIRD: By accepting orders into this program, during the initial 6-year period of obligated service, I am, for a period of 4 years following graduation from stenotype school, not eligible to apply for any other Marine Corps programs or "B" type billets; e.g., warrant officer, enlisted commissioning, degree completion, drill instructor duty, recruiting duty, etc., that would be inconsistent with performance of duties as a stenotype court reporter.

FOURTH: If in receipt of a selective reenlistment bonus for the current enlistment, I voluntarily agree to recoupment of that percentage of the bonus that represents the unexpired portion of the obligated service for which the bonus was paid.

FIFTH: That my assignment to stenotype school at Government expense may be terminated by CMC (JA) if I am unable or fail to maintain satisfactory grades, am unable or fail to make satisfactory progress in attaining required machine shorthand writing speed levels, or fail to maintain required standards of conduct or performance.

SIXTH: That my assignment to stenotype school at Government expense may be terminated by CMC (JA) for failure to comply with this agreement or when the best interests of the Marine Corps would be served by my termination. Such termination will not occur until I have received written notification and have been given 5 working days to make a statement concerning such termination.

Figure 18-2.--Format for Stenotype Program Agreement.

Signed this ____ day of _____, _____ in the presence of the below witness.

_____
(Signature of Applicant)
Typed Name of Applicant
Typed Grade, SSN, MOS

_____
(Signature of Witness)
Typed Name of Witness
Typed Grade, SSN

Figure 18-2.--Format for Stenotype Program Agreement--Continued.

CHAPTER 19

LAW EDUCATION PROGRAMS

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CHAPTER 19

LAW EDUCATION PROGRAMS

19000. BACKGROUND

1. Funded Law Education Program (FLEP). Pursuant to 10 U.S.C. 2004, as implemented by DoD Directive 1322.12 and SECNAVINST 1520.7_, commissioned officers of the Marine Corps, while continuing to draw full pay and allowances, may be ordered as students at Government expense to American Bar Association (ABA) accredited law schools located in the United States for education leading to the degree of Juris Doctor or Bachelor of Law.

2. Excess Leave Program (Law) (ELP(L)). Pursuant to 37 U.S.C. 502(b), commissioned officers of the Marine Corps may be permitted leave without pay and allowances in excess of that authorized by 10 U.S.C. 701(b), to attend ABA accredited law schools located in the United States at no expense to the Government for education leading to the degree of Juris Doctor or Bachelor of Law.

3. Satisfactory completion of either FLEP or ELP(L), coupled with successful completion of the Basic Lawyer Course and the Basic Operational Law Training Course, leads to designation as a Marine Corps judge advocate (MOS 4402).

4. Special Education Program (Law) (SEP(LAW)) and Advanced Degree Program (ADP). The Marine Corps has identified and validated several billets which are required to be staffed by officers who possess postgraduate level education. SEP(LAW) and ADP were established as a means of providing the Marine Corps with a sufficient number of qualified officers to fill these billets. Officers selected for participation in SEP(LAW) and ADP must complete all degree requirements within 1 calendar year. Failure to do so will result in separation from the program and may be treated as an academic failure. Attainment of a Masters of Law (LL.M.) degree in the specific area of law identified in the officer's orders is essential to the law expertise required by the Judge Advocate Division. Refer to MCO 1520.9_ (SEP(LAW)) and MCO 1560.19_ (ADP) for more information on these programs.

19001. SELECTION. A selection board will be convened by CMC annually to consider applications from commissioned officers and will recommend officers for participation in FLEP, ELP(L), SEP(LAW), and ADP.

19002. QUALIFICATIONS

1. General. An applicant for FLEP/ELP(L) must possess the following qualifications:

a. Have graduated from an accredited college or university with a baccalaureate degree;

b. Have taken the Law School Admission Test (LSAT), prepared and administered by the Law School Admission Council, Box 2000, Newtown, PA 18940-0998, lsac@org. Such test shall be arranged for and taken by each applicant without expense to the Government;

c. Have satisfactory evidence of acceptance or conditional acceptance or admission to an ABA accredited law school located within the United States. Officers who have earned law school credits must submit a transcript of law school work completed; and

d. Be an unrestricted officer in the Marine Corps. Marine Corps Reserve officers must be offered augmentation, and must indicate an intent to accept a regular commission prior to being considered by the FLEP/ELP(L) selection board

2. Special FLEP Qualifications. An applicant must:

a. Be a citizen of the United States;

b. Be in the grade of captain or below;

c. Have a minimum of 2 years but not more than 6 years total active duty (commissioned and enlisted service combined) when law education begins; and

d. Be able to complete 20 years active service as a commissioned officer before the 55th birthday.

Note: Because these are statutory qualifications, they cannot be waived.

3. Special ELP(L) Qualifications. An applicant must have a minimum of 2 years of commissioned service, with no more than 8 years of total active duty when law education begins.

4. Special SEP(LAW)/ADP Qualifications

a. Unrestricted commissioned officers in the Marine Corps on active duty are eligible for the programs. Eligibility for the programs is limited to judge advocates in the grades of first lieutenant through major.

b. Officers who have previously participated in the SEP, ADP, Voluntary Graduate Education Program, Secretary of the Navy Scholarship Program, International Affairs Officer Program (IAOP, formerly the Foreign Area Officer/Regional Area Officer Program), Olmsted Scholarship Program, or other full time post baccalaureate Marine Corps funded programs are not eligible.

c. Officers who have previously participated in the College Degree Program, Naval Enlisted Scientific Education Program, Marine Corps Enlisted Commissioning Education Program, FLEP, or ELP(L), are eligible after they have completed the obligation of service incurred as a result of participation in the subject programs.

d. Although officers will normally complete the prescribed tour length
(see MCO P1300.8_) at their present duty station prior to being assigned to school, the SEP(LAW)/ADP selection board will have the authority to recommend a waiver. The board can also recommend a deferral of school commencement for 1 year to allow for an intervening overseas unaccompanied tour, or because of operational commitments which require the presence of the applying officer.

e. Officers that have orders to, or that have indicated an intent to accept orders to, Intermediate Level School (Command and Staff or The Judge Advocate General's Legal Center and School) are not eligible for the SEP (LAW) or ADP programs.

19003. APPLICATIONS. Figures 19-1 through 19-3 provide detailed instructions for completing applications for FLEP and ELP(L). SEP(LAW)/ADP applications will be prepared per MCO 1520.9_ and 1560. 19_.

19004. OBLIGATIONS UPON ACCEPTANCE

1. Participants in FLEP/ELP(L) will incur obligated active service, in addition to preexisting obligated service incurred prior to entering the program, in accordance with the following:

a. FLEP. Upon successful completion of FLEP, two years (24 months) for each year, or any part thereof, spent in the program;

b. ELP(L). Upon successful completion of ELP(L), one year (12 months) for each year, or any part thereof, spent in the program. In no case will the total period of obligated service under ELP(L) be less than 2 years.

c. Early Termination. One year (12 months) for each year, or any part thereof, spent in the program, not to exceed 3 years;

d. For purposes of determining the foregoing obligated service, participation in FLEP/ELP(L) begins when the officer reports for duty under instruction with the organization to which assigned while attending law school and ends on the earliest of the following dates:

(1) Conferral of a law degree;

(2) Detachment from duty under instruction; or

(3) Admission to the practice of law before a Federal court of the United States or the highest court of a State, the District of Columbia, a U. S. Territory, or the Commonwealth of Puerto Rico.

e. For FLEP officers, temporary additional duty periods (summer assignments to legal offices, other such duty, hospitalization, etc.) or leave periods count against preexisting obligated service on a day-for-day basis. For ELP(L) students, all periods in a pay status similarly count. No other periods of participation in FLEP/ELP(L) may be counted against preexisting obligated service.

2. ELP(L) students are not required to utilize their accrued leave prior to being placed in an excess leave status.

3. SEP(LAW)/ADP. Officers applying for SEP(LAW) and ADP must agree not to tender a resignation, or request separation or retirement, while participating in the program. Officers must further agree to remain on active duty after completion of training, or upon separation from SEP (LAW) or ADP for any other reason, for a period of 3 years. This obligated service is in addition to any preexisting obligation and must be served consecutively. The crediting of service against any preexisting service obligation will be suspended during the time assigned to SEP(LAW) or ADP.

19005. DURATION OF FLEP/ELP(L). Participants are authorized to remain in a student/excess leave status for up to 36 months while pursuing a basic law degree and admission to the bar. Student/excess leave status begins on the date of reporting to the unit to which assigned while attending law school.

19006. GENERAL INSTRUCTIONS

1. Upon acceptance into FLEP/ELP(L), and within a reasonable time before classes are to begin, officers will be transferred by permanent change of station orders to a Marine Corps activity convenient to the law school the officer will attend. At all times while in the program, they are under the command of the commanders/officers in charge of their respective permanent duty stations.

a. During the academic year from the start of classes until the completion of the bar examination, a FLEP/ELP(L) officer’s primary duty is as a law student.

b. Officers in FLEP/ELP(L) are ordinarily not required to report to their commands except in cases of necessary administrative processing, e.g., pay related matters, annual leave authorization, receipt of summer TAD orders, annual fitness reports, PFTs, etc. Officers are encouraged to maintain periodic contact with their commands, however, to ensure compliance with this chapter.

c. Commanders/officers in charge shall not require participation in the command; e.g., flag details, casualty calls, phone watch, inspections, recruiting, etc., except for an ELP(L) student performing duty in a pay status.

d. Commanders/officers in charge shall maintain appropriate liaison directly with the Director, Judge Advocate Division and shall forward to CMC (JAS) information that might affect the officer's ability to complete the course of study successfully or the desirability of continuing the officer in FLEP/ELP(L).

2. While in FLEP/ELP(L), officers are representatives of the Marine Corps. Their conduct, personal appearance, demeanor, life-style, and activities as law students and citizens reflect not only upon themselves but upon the Marine Corps as well. Each officer must project an image in both the civilian and legal communities which is in keeping with the highest traditions of the Marine Corps. Although civilian clothing may be worn while attending school, Marine Corps grooming standards shall be adhered to at all times.

3. Law School Attendance

a. A FLEP/ELP(L) officer's appointed place of duty during the academic year is the law school being attended. In particular, such officers shall attend all classroom periods of instruction in which enrolled (whether required by the law school or not) and all other activities, assemblies, sessions or the like required by the law school unless excused by competent authority.

b. In addition to taking those courses required by the law school, FLEP/ELP(L) officers shall elect courses that will be of most benefit to the Marine Corps, such as labor law, environmental law, trial advocacy, administrative law, etc. Additionally, if offered, students shall take trial advocacy clinics/internships ("hands on" training). Unless required for the state bar examination, students should avoid electing courses such as securities, corporation law, commercial paper, etc., that are not related to those areas of practice in which

judge advocates normally engage.

c. To ensure that elective course selection is consistent with military law practice, CMC (JAS) will approve each student's proposed elective course selections prior to final registration for courses each semester.

(1) Each student will ensure that CMC (JAS) is provided a current course catalog from the law school being attended.

(2) Additionally, each student shall provide to CMC (JAS) a written or electronic list of proposed electives in advance of final course registration to allow for review and written approval or disapproval.

d. Scholarships, fellowships, grants or cash awards shall not be accepted by FLEP/ELP(L) students without prior approval of CMC (JAS)

e. Students are encouraged to participate in extracurricular activities of their law school or related to the law to the greatest extent that is not detrimental to their academic standing. Some activities which tend to enhance potential as a future Marine Corps judge advocate are law review, moot court, student bar associations, dean's committees, legal aid clinics, trial advocacy clinics, law fraternities, and law school publications.

4. Summer Vacation

a. All FLEP/ELP(L) officers must perform military duties during the law school summer vacation unless excused by CMC (JAS). Such duty normally will be served at a major Marine Corps command in an office involved in the practice of law. This duty is considered an integral part of the training included in FLEP/ELP(L).

b. Officers shall advise CMC (JAS) of the inclusive dates of the law school summer vacation not later than 60 days prior to the end of the academic year.

c. Assignments to summer duty will be made by CMC (JAS). Travel, transportation, allowances, and per diem will be authorized for TAD performed at a command other than the permanent duty station. Funding is included in the operating budget held by HQMC and appropriation data will be provided to commanding officers.

d. Annual leave is authorized during the summer law school vacation. However, leave requests should be reasonable and should be made for periods prior to and/or following summer TAD. Students shall advise CMC (JAS) of requested summer leave periods so that TAD dates can be adjusted.

5. Summer School. In unusual cases, students may be authorized to attend summer school at no additional expense to the Government. Requests for summer school attendance should be addressed to CMC (JAS). If authorized, summer school attendance will be in lieu of part or all of summer duty at a major Marine Corps command.

6. The Director, Judge Advocate Division oversees FLEP/ELP(L). Therefore, students are authorized to communicate directly with that officer concerning any matter affecting their status, progress, or activities in the program. They are also encouraged to make frequent reports of their activities in the program by letter or e-mail to CMC (JAS).

19007. PAY STATUS ASSIGNMENT (PSA) FOR ELP(L) STUDENTS

1. At the request of an ELP(L) student, the commander of the unit to which the ELP(L) student is attached shall order the student into a pay status, except under the following conditions:

a. The student will not be ordered into a pay status on any day on which the student has a class or exam scheduled.

b. The student will not be ordered into a pay status if doing so will interfere with the student's academic study or the student is unavailable to perform duty. Actual performance of duty is not necessary (e.g., on weekends and holidays when the unit is normally on liberty). The commander may, however, assign appropriate duties during such periods. Students may be assigned any duties deemed appropriate by the commander, e.g., CACO, staff duty officer, participation in military training, inspections, etc.

2. Commanders are authorized to issue "continuing orders to PSA."

a. Continuing orders to PSA may be used for weekends, holidays, and weekdays on which the student does not have classes scheduled (e.g., Thanksgiving, Christmas, and post-examination semester breaks).

b. When on PSA, the student is entitled to pay and allowances at the daily rate of one-thirtieth of a month's pay and allowances. The 31st day of a calendar month shall not be excluded from such computation.

c. Specific PSA dates will be listed in the continuing orders, and this paragraph will be referenced as authority.

d. A consecutively numbered reporting endorsement will be prepared for each individual pay status period, below which the ELP(L) student will

certify that no class or examination was scheduled on any of the dates on which the student was ordered into a pay status. Sample orders are shown in figure 19-4.

e. If properly excused from summer TAD, in accordance with paragraph 19006.4, an ELP(L) student may perform PSA duties locally.

19008. TERMINATION FROM FLEP/ELP(L)

1. Prior to graduation from law school, an officer may be terminated from FLEP/ELP(L) by CMC for deficiency in academic performance or conduct, abandonment of the study of law, or for other good cause.

a. Deficiency in academic performance shall include, but is not limited to, receipt of one or more failing grades, or failure to maintain a satisfactory minimum grade point average as determined by the law school.

b. Deficiency in conduct shall include, but is not limited to, conviction by court-martial or civilian court, nonjudicial punishment, or other behavior recognized by the Marine Corps as inconsistent with (1) the high standards of conduct and performance of the officer corps and/or (2) the ethical standards of the legal profession.

c. Abandonment of the study of law shall include, but is not limited to, voluntary disenrollment from law school.

2. Before an officer may be terminated from the program, the officer shall be notified in writing of the grounds for termination and shall be afforded an opportunity to make a written reply within a reasonable period of time. Such reply, if made, shall be considered by CMC in determining whether the officer shall be dropped from the program. The grounds for the final decision shall be set forth in writing and a copy thereof provided to the officer concerned.

19009. FITNESS REPORTS

1. Reports Concerning Academic Performance. The Branch Head or Deputy Branch Head, Judge Advocate Support Branch will serve as the reporting senior for FLEP participants. The commander of the organization to which assigned is the reporting senior for ELP(L) participants.

a. Student's Responsibility. Each student will submit directly to the reporting senior, as soon as practicable after the end of each academic year, the following documents and information:

(1) A transcript of grades for each course taken showing, if available, class standing.

(2) A narrative statement describing in detail all academic and

extracurricular activities.

(3) Copies of any law review or other extracurricular writings.

(4) Statement or evidence of any honors or awards received.

(5) Upon graduation from law school, a consolidated transcript of all law school grades showing the date of graduation and degree conferred and, if available, final class standing.

b. Content of Reports. Reports pertaining to the student's performance during the academic year will be based upon transcripts, narratives, information provided by the student, and other relevant information available to the reporting senior.

c. Special Instructions for Completing Section A

(1) Item 1g. Enter ”4401.”

(2) Item 2a. Enter “K51” for FLEP students, “K17” for ELP(L) students “H99” for SEP students, and “K47” for ADP students.

(3) Item 2b. Enter the RUC of the student’s parent organization.

(4) Item 2c. Enter the descriptive title of the student’s parent organization.

(5) Item 4. Enter “Student Judge Advocate” or other appropriate title.

d. Guidance for the Reporting Senior. Due to the demands of law education on the time of the student and the geographical location of the student in relation to the reporting senior, the opportunities for observation may be infrequent or nonexistent. In such cases, a "not observed" report may be appropriate, with a narrative description of the student's academic performance and activities in section C.

2. Summer TAD Reports

a. During periods of summer TAD, the reporting senior is as defined in MCO P1610.7_, paragraph 2003.

b. Special Instructions for Completing Section A

(1) Item 1g; Enter “4401.”

(2) Item 2a through 2c. Enter the MCC, RUC, and descriptive title of the student’s TAD organization.

(3) Item 4. Enter "Student Judge Advocate" or other title

appropriate to the duties performed.

19010. FLEP/ELP(L) COMPLETION

1. Completion of Law School. The date of the last course examination at the end of the third year of law school shall be provided to CMC (JAS) as soon as the final examination schedule is available. In addition, not less than 60 days prior to completion of law school, each student shall provide CMC (JAS) with the following information:

a. Date of law school graduation.

b. Name, location, and dates of the bar review course(s) the student plans to take.

c. Jurisdiction and dates of the bar examination the student plans to take. This must be the first scheduled bar examination following graduation from law school, either in the State in which the student's law school is located or in the student's domiciliary. Other jurisdictions must be approved by CMC (JAS).

2. Status While Awaiting the Bar Examination

a. During the period between graduation and the bar examination, the student's primary duty is to prepare for the examination.

b. FLEP. FLEP graduates will normally remain in a "duty under instruction" status until the bar examination is completed.

c. ELP(L). ELP(L) graduates will normally be retained at the parent/administrative command until the bar examination is completed. The excess leave status of an officer assigned to ELP(L) shall be terminated as of the day following the student's last examination at the end of the third year of law school. The ELP(L) student is then in a full pay status and is on duty at the permanent duty station. The ELP(L) officer is subject to assignment to any appropriate duties. However, commanders may not assign any duties which may interfere with the full and proper preparation for the bar examination, including taking a bar review course.

3. Bar Review/Examination

a. FLEP/ELP(L) students are authorized an administrative absence in accordance with chapter 5 of MCO P1050.3_ and, if travel is necessary, permissive TAD orders at no expense to the Government for the purposes of taking a bar review course, the bar examination, and a swearing-in ceremony.

b. Fees for one bar review course, one multi-state bar review course, and mandatory bar examination fees will be paid by the Marine Corps for all FLEP/ELP(L) students.

c. Upon completion of the bar examination, FLEP/ELP(L) students will be retained at their commands until such time as they are ordered to the Naval Justice School. They may be assigned any and all duties commensurate with their grade and experience.

4. Certification and Designation. FLEP/ELP(L) graduates will provide directly to CMC (JAS) an official final transcript of their law school record showing receipt of a law degree, and a certified copy of certification of admission to the bar. When these documents have been received and the officer has graduated from the prescribed course at the Naval Justice School, the Director, Judge Advocate Division will request the Judge Advocate General of the Navy to certify the FLEP/ELP(L) graduate under UCMJ, Article 27b, and to designate the officer a judge advocate of the Marine Corps. Upon designation, the officer will be assigned primary MOS 4402, Judge Advocate.

19011. EDUCATIONAL EXPENSES

1. Tuition and Fees

a. FLEP. The Marine Corps will fund mandatory tuition and fees.

b. ELP(L). Except as indicated in paragraph 19010.3, the Marine Corps will not fund tuition or fees.

c. SEP(LAW). The Marine Corps will fund mandatory tuition and fees.

d. ADP. The Marine Corps will not fund tuition or fees.

2. Book Allowance

a. FLEP. Students are eligible for a book allowance to provide for essential books in connection with law school attendance. The book allowance will not exceed $150.00 annually.

b. ELP(L). No book allowance is authorized.

c. SEP(LAW). A reimbursable allowance of up to $100.00 per academic quarter is available for the purchase of required textbooks. Individuals are also entitled to a maximum of $200.00 for the costs incurred in the typing of a required thesis.

d. ADP. No book allowance is authorized.

3. Reimbursement/Payment. Request for reimbursement/payment of mandatory tuition and fees (FLEP and SEP(LAW) students only), book

expenses (FLEP and SEP(LAW) students only) and bar review/examination fees (FLEP and ELP(L) students) should be forwarded to the Commanding General, Training and Education Command, Financial Management Branch

C464, 3300 Russell Road, Quantico, Virginia 22134-5001. Requests should be submitted on an Administrative Action Form in the format shown in figures 19-5, 19-6, and 19-7. Requests for reimbursement of book expenses should include the required book list and receipts of payment.

19012. VETERAN'S EDUCATION BENEFITS

1. FLEP. In accordance with 38 CFR 21.7144, officers assigned to FLEP are not eligible for any Veterans Administration (VA) education benefits.

2. ELP(L). If otherwise eligible, officers assigned to ELP(L) are eligible for VA education benefits.

19013. TUITION ASSISTANCE. In accordance with DoD Directive 1322.25, FLEP/ELP(L) students are not eligible for tuition assistance provided by the armed forces.

19014. OUTSIDE EMPLOYMENT. FLEP/ELP(L) students shall not engage in outside employment unless specifically authorized by CMC(JAS). Requests from ELP(L) students will normally be approved if such employment, in accordance with 10 U.S.C. 973, does not interfere with the performance of military duties and the study of law.

19015. GOVERNMENT QUARTERS

1. FLEP. Officers in the FLEP program are eligible for assignment of Government quarters at or near their permanent duty station.

2. ELP(L)

a. Eligibility. In accordance with MCO P11000.22, officers in the ELP(L) program are eligible for Marine Corps family housing; however, officers will be charged a rental fee equal to the Basic Allowance for Housing and applicable Variable Housing Allowance rate of active duty personnel of comparable rank. When the officers are in an active duty status, any housing allowances forfeited while in that pay status will be deducted from the rental charge. Eligibility for housing aboard Navy, Army, and Air Force installations will be determined by the rules and regulations of those services.

19016. EXCHANGE, COMMISSARY, MEDICAL, AND DENTAL. Entitlement to these benefits is not affected by participation in FLEP/ELP(L).

19017. ALLOTMENTS AND INSURANCE FOR ELP(L) STUDENTS

1. General. Because ELP(L) students are not entitled to pay and allowances while in an excess leave status, all allotments in effect at the time of transfer into ELP(L) shall be terminated and no new allotments will be authorized. If ELP(L) students desire to continue Government (except SGLI) or commercial insurance, loan repayments, or saving bonds, they must make arrangements for direct remittance.

2. SGLI. ELP(L) students will continue to be covered by SGLI, unless they have elected not to be insured. Premiums in arrears for SGLI shall be deducted from the first regular pay following return to a pay status.

19018. MEDICAL DISABILITY. In accordance with 10 U.S.C. 1201, entitlement to medical disability pay is not affected by participation in FLEP/ELP(L).

19019. RETIREMENT CREDIT. Time spent in an excess leave status is counted in computing active service and total commissioned service.

19020. FLIGHT STATUS. An aeronautically designated officer is not considered to be performing aviation service on a career basis while in FLEP/ELP(L). Officers must agree to voluntarily terminate this status on the day training in FLEP/ELP(L) begins. Entitlement to Aviation Career Incentive Pay (ACIP) also ends on that date. Officers who are terminated from FLEP/ELP(L) may request reinstatement of their flight status and reinstate their entitlement to ACIP prospectively.

19021. SPECIAL AND HAZARDOUS DUTY INCENTIVE PAYS. Any special incentive pay an officer may be receiving by virtue of special qualifications or prior duty assignment will be terminated on the day training in FLEP/ELP(L) begins.

APPLICATION FOR LAW EDUCATION PROGRAMS

1. Form and Content. Applications shall be submitted to CMC (MMOA-5) on the Administrative Action Form (NAVMC 10274) via the chain of command. See figure 19-2. All applications must be received at Headquarters Marine Corps prior to the deadline established in the MARADMIN announcing the convening of the board. Applications must contain the following:

a. Names of all colleges and universities attended and dates the baccalaureate and any other degrees were received. State class standing, if available.

b. Active duty base date (ADBD), overseas control date (OSCD) and rotation tour date (RTD) if overseas.

c. Statement that the applicant either holds, or has been offered and indicated an intent to accept, a regular commission.

d. Statement of legal education completed and any legal training or experience gained in civilian and military life.

e. The names of law schools accredited by the American Bar Association to which the applicant has been accepted, in priority order.

f. The resident and non-resident tuition rate for each law school, if applicable. Officers must indicate whether they are eligible for the resident tuition rate, and whether they are eligible for any scholarships. If eligible for a scholarship, include the amount and duration of the scholarship.

g. The date that the LSAT was taken.

h. Dates that anticipated law study will begin (i.e., the date law school classes begin) and be completed, including the anticipated date of the bar examination.

i. A statement of where the applicant intends to reside while attending law school and a statement of whether the applicant prefers to be assigned to a Marine Corps activity nearest the law school or nearest the applicant's anticipated residence while attending law school. CMC (MMOA-1) will determine the Marine Corps activity to which selectees will be assigned.

j. DSN/commercial telephone number during working hours.

Figure 19-1--Instructions for Submitting Applications for Law Education Programs.

k. As enclosures:

(1) Copies of all college level and graduate level transcripts. An explanation of the grading system used at the institutions attended shall be included.

(2) Letters of acceptance or conditional acceptance from the law schools listed in the AA Form.

(3) A certified true copy of the LSAT score report form.

(4) A brief statement (500 words of less) indicating steps the applicant has taken to learn about a career as a Marine Corps judge advocate, and a statement of the reason for seeking such a career. This statement should refer to an interview with a senior judge advocate (see paragraph 2b of this figure).

(5) A signed and witnessed agreement as contained in figure 19-3 (select FLEP, ELP(L), or both). These forms may be reproduced locally.

(6) Official photograph as prescribed by MCO P1070.12_ (IRAM).

l. Except as required by paragraph 2b of this figure, letters of recommendation are not desired and, if received, will not be placed before the selection board.

2. Endorsement

a. The applicant's commanding officer shall include in the forwarding endorsement a specific recommendation concerning the applicant's future value to the Marine Corps as a judge advocate.

b. Where practicable, all applicants shall be interviewed by the staff judge advocate to the general court-martial command of which the applicant is a member. The staff judge advocate's comments and recommendations concerning the applicant shall be made an enclosure to the forwarding endorsement. Where not practicable, a senior judge advocate of any Armed Force who is available in the area shall be requested to conduct the interview and prepare this statement. The staff judge advocate should address the probability of the applicant's success in the study of law, the applicant's motivation to become a Marine Corps judge advocate, and the applicant's full understanding of all aspects of the program applied for.

3. Combined Application. Officers who intend to apply for acceptance into both the FLEP and the ELP(L) should submit one combined application which satisfies the requirement of both programs.

Figure 19-1.--Instructions for Submitting Applications for Law Education Programs--Continued.

ADMINISTRATIVE ACTION (5216)
NAVMC 10274 (REV. 3-93) (EF)
Previous editions will be used
SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO.	2. SSIC/FILE NO.
ADMIN	1560
3. DATE 20040301	

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)
Captain Justin B. Advocate
123 45 6789/0302

5. ORGANIZATION AND STATION (Complete address)
1st Bn, 5th Mar, 1st MarDiv
MCB Camp Pendleton, CA 92055

6. VIA (As required)
(1) CO, 5th Mar
(2) CG, 1st MarDiv

7. TO:
Commandant of the Marine Corps
Manpower and Reserve Affairs
Graduate Education MMOA-5
3280 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT
Application for the Funded Law Education Program/Excess Leave Program (Law)

9. COPY TO (As required)
CMC (JAS)

10. REFERENCE OR AUTHORITY (if applicable)
LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)
(1) College Transcript
(2) Law School Acceptance Letters and Tuition Rates
(3) LSAT Score Report
(4) Statement of Applicant
(5) FLEP/ELP (L) Agreement
(6) Official Photo

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of orginator and sign 3 lines below text)

1. Colleges attended: University of New Orleans, BA 930520. Class Standing 12 of 223.

2. ADBD - 930801; OSCD – N/A; RTD (if overseas) - 040801

3. I hold a regular commission. <u>or</u> I have been offered and have indicated an intent to accept augmentation.

4. I have no prior legal experience or education.

5. Louisiana State University – Eligible for the resident tuition rate of $11,403 per year.
University of Southern California – Tuition rate of $35,394 per year.
University of Oklahoma – Eligible for the non-resident tuition rate of $18,895 per year.

6. LSAT taken December 2003.

7. Anticipated law study will commence September 2004 and will be completed by May 2008. Anticipated bar examination will be in California in July 2008.

8. I intend to reside near the law school and prefer to be assigned to the Marine Corps activity nearest the law school.

9. DSN phone number: 224-3412; Commercial phone number: (703) 614-3412.

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-2.—Sample Application for FLEP/ELP(L)

AGREEMENT FOR FUNDED LAW EDUCATION PROGRAM

1. I, the undersigned, a commissioned officer of the United States Marine Corps (Reserve) presently serving on active duty, certify that I have read and understand chapter 19 of MCO P5800.8_ (LEGADMINMAN) which governs the administration of the Funded Law Education Program, hereinafter referred to as FLEP, and am fully cognizant of all provisions of that chapter and their effect upon my status as an officer if accepted for FLEP.

2. In consideration of being allowed to pursue the full-time study of law at Government expense and qualify for admission to the bar and designation as a judge advocate of the Marine Corps (MOS 4402), I agree to the following:

FIRST: To comply with all requirements of LEGADMINMAN, chapter 19, as a FLEP student.

SECOND: That my assignment to law school at Government expense may be terminated by CMC if I am unable or fail to maintain satisfactory grades in law school, or abandon the study of law for any reason.

THIRD: That my assignment to law school at Government expense may be terminated by CMC for failure to comply with this agreement or when the best interests of the Marine Corps would be served by my termination. Such termination will not occur until after written notification is received by me and a 30-day period is provided for me to make a statement concerning such termination.

FOURTH: To make due and timely application to take the bar examination and to apply for admission to practice law before the highest court of a State or a district court of the United States as soon as practicable after graduation from law school.

FIFTH: To accept designation as a judge advocate of the Marine Corps and assignment of MOS 4402, Judge Advocate.

SIXTH: To serve on active duty, if I graduate from law school, for a period of 2 years for each academic year or portion of a year spent in FLEP in addition to any preexisting service obligation, computed from the earliest of the following dates:

(1) admittance to practice law before a Federal court or the highest court of a State or the District of Columbia;

(2) detachment from duty under instruction as a FLEP student; or

Figure 19-3.--Format for FLEP/ELP(L) Agreements.

(3) conferral of a law degree.

SEVENTH: To serve on active duty, if my assignment to law school at Government expense is terminated for any reason prior to graduation from law school, for a period of 1 year, commencing from the date of my termination, for each academic year or portion thereof (not to exceed 3 years) spent in FLEP in addition to any preexisting service obligation; in the case of such early termination my MOS of 4401, Student Judge Advocate, will be voided and my former primary MOS will be reassigned.

EIGHTH: That the crediting of service against any preexisting service obligation I may have will be suspended during the time I am assigned to this program, except that (1) periods of time spent at assigned duty stations during summer vacation (when not attending law school) and (2) the time between my completion of law school and designation as a Marine judge advocate/certification under Article 27b, UCMJ, will count toward satisfaction of any period of obligated service other than that incurred as a result of assignment to the law. school under this program.

3. It is now requested that, upon my so qualifying, I be designated a Marine Corps judge advocate and that I be assigned primary MOS 4402 Judge Advocate.

Signed this ____ day of _____, 200__ in the presence of the below witness.

_____
(Signature of Applicant)

Typed Name of Applicant
Typed Grade, SSN, MOS

_____
(Signature of Witness)

Typed Name of Witness)
Typed Grade, SSN

Figure 19-3.--Format for FLEP/ELP(L) Agreements--Continued.

EDUCATION PROGRAM AGREEMENT FOR EXCESS LEAVE PROGRAM (LAW)

1. I, the undersigned, a commissioned officer of the United States Marine Corps (Reserve), certify that I have read and understand chapter 19 of MCO P5800.8_ (LEGADMINMAN) which governs the administration of the Excess Leave Program (Law), hereinafter referred to as ELP(L), and am fully cognizant of all provisions of that chapter and their effect upon my status as an officer if accepted for ELP(L).

2. In consideration of being allowed to pursue the full-time study of law and qualify for admission to the bar and designation as a Marine Corps judge advocate, I agree to the following:

FIRST: To comply with all requirements of LEGADMINMAN, chapter 19, as an ELP(L) student.

SECOND: That my participation in the ELP(L) shall be terminated by CMC if I am unable or fail to maintain satisfactory grades in law school or abandon the study of law for any reason.

THIRD: That my participation in ELP(L) may be terminated by CMC without prior notice to me, in the best interests of the Marine Corps.

FOURTH: To make due and timely application to take the bar examination and to apply for admission to practice law before the highest court of a State or a Federal court as soon as practicable after graduation from law school.

FIFTH: To accept designation as a Marine Corps judge advocate and assignment of MOS 4402, Judge Advocate.

SIXTH: To serve on active duty, regardless of whether I graduate from law school or am admitted to practice law and regardless of whether I complete the requirements of ELP(L) or am earlier terminated or withdraw from ELP(L), for a period of 1 year for each year or portion of a year spent in ELP(L), but not less than 2 years. Active duty creditable towards my obligation will begin the day after the earlier of the following dates: (1) my admittance to practice before the highest court of a State or the District of Columbia or a district court of the United States; (2) my detachment from duty under instruction in ELP(L); or (B) my receipt of a law degree. This obligated active service is in addition to any period of obligated service I may have acquired other than as result of my participation in ELP(L), but in no case will my total cumulative active duty obligation, including the obligation resulting from participation in ELP(L) and my preexisting obligation, be less than 2 years nor more

Figure 19-3.--Format for FLEP/ELP(L) Agreements--Continued.

than 5 years after the date my ELP(L) obligation begins or the date of my early termination from ELP(L).

3. It is now requested that, upon my so qualifying, I be designated a Marine Corps judge advocate and that I be assigned primary MOS 4402, Judge Advocate.

Signed this ____ day of _____, 200__ in the presence of the below witness.

_____
(Signature of Applicant)

Typed Name of Applicant
Typed Grade, SSN, MOS

_____
(Signature of Witness)

Typed Name of Witness)
Typed Grade, SSN

Figure 19-3.--Format for FLEP/ELP(L) Agreements--Continued.

UNITED STATES MARINE CORPS
Inspector-Instructor Staff
Company I, 3d Battalion, 24th Marines
160 White Bridge Road
Nashville, TN 37209

1300
ADMIN
1 Aug 04

From: Inspector-Instructor
To: Captain Justin B. Advocate 123 45 6789/4401 USMC
1313 South Mockingbird Lane, Nashville, TN 37205

Subj: CONTINUING ORDERS TO PAY STATUS ASSIGNMENTS WHILE PARTICIPATING IN THE EXCESS LEAVE PROGRAM (LAW) (ELP(L))

Ref: (a) LEGADMINMAN, par. 19007

1. As authorized in the reference, you are assigned to a pay status with this unit during the following periods:

a. During Sep 2005: 5-6, 12-13, 19-20, 26-27.

b. During Oct 2005: 3-4, 10-11, 17-18, 24-25, 31.

c. During Nov 2005: 1, 7-8, 14-15, 21-22, 28-29.

d. During Dec 2005: 5-6, 12-13, 19-20, 26-27.

e. During Jan 2006: 2-3, 9-10, 16-17, 23-24.

f. During Feb 2006: 6-7, 13-14, 20-21, 27-28.

g. During Mar 2006: 6-7, 13-14, 20-21, 27-28.

h. During Apr 2006: 3-4, 10-11, 17-18, 24-25.

i. During May 2006: 19-3, 8-9, 15-16, 22-23, 29-30.

2. You will return to an excess leave status as of 0001 of the day following the final date of each pay status period and resume participation in ELP(L).

3. You may be excused from performing duty in a pay status on any of the above dates upon oral or written request to the Inspector-

Figure 19-4.--Sample Orders for Pay Status Assignments for ELP(L) Students.

Subj: CONTINUING ORDERS TO PAY STATUS ASSIGNMENTS WHILE
PARTICIPATING IN THE EXCESS LEAVE PROGRAM (LAW) (ELP(L))

Instructor. Upon approval of any such request, you will remain in an excess leave status on that date.

4. Should the law school you are attending under ELP(L) schedule a class or examination for you on any of the above dates, this order is revoked as it applies to that date. You are cautioned that you may not perform duty in a pay status on any date on which your law school schedules a class or examination that you are required to attend.

5. This order will be revoked as to any date that there is a likelihood that such assignment to pay status may adversely affect your academic standing in law school.

6. No travel, proceed or per diem is involved in the execution of these orders and none is authorized.

H. CAMPER

Copy to:
DisbO

Figure 19-4.--Sample Orders for Pay Status Assignments for ELP(L) Students--Continued.

LEGADMINMAN
UNITED STATES MARINE CORPS
Inspector-Instructor Staff
Company I, 3d Battalion, 24th Marines
160 White Bridge Road
Nashville, TN 37209

1300
ADMIN
1 Aug 04

From: Inspector-Instructor
To: Captain Justin B. Advocate 123 45 6789/4401 USMC
1313 South Mockingbird Lane, Nashville, TN 37205

Subj: CONTINUING ORDERS TO PAY STATUS ASSIGNMENTS WHILE PARTICIPATING IN THE EXCESS LEAVE PROGRAM (LAW) (ELP(L))

Ref: (a) My ltr 1300 ADMIN of 11 Aug 98

1. As directed by the reference, you reported to duty in a pay status with this unit at 0800, 1 September 1998.

2. As of 0001 of the day following this date your pay status is terminated and you will return to an excess leave status and resume your participation in ELP(L).

H. CAMPER

C E R T I F I C A T I O N

I certify that no class or examination was scheduled for me by the law school in which I am enrolled as a participant in the Excess Leave Program (Law) on any of the above dates during which I performed duty in a pay status.

JUSTIN B. ADVOCATE

Copy to:
DisbO

Figure 19-4.--Sample Orders for Pay Status Assignments for ELP(L) Students--Continued.

ADMINISTRATIVE ACTION (5216)
NAVMC 10274 (REV. 3-93) (EF)
Previous editions will be used
SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO.	2. SSIC/FILE NO.
ADMIN	7431
3. DATE	
20040801	

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)	5. ORGANIZATION AND STATION (Complete address)
Captain Justin B. Advocate 123 45 6789/4401	Inspector-Instructor CO I, 3d Bn, 24th Mar 160 White Bridge Road Nashville, TN 37209
6. VIA (As required)	

7.	8. NATURE OF ACTION/SUBJECT
TO: Commandant of the Marine Corps Training and Education Command Financial Management Branch C464 3300 Russell Road Quantico, VA 22134-5103	Tuition Payments in Connection with the Funded Law Education Program
	9. COPY TO (As required)

10. REFERENCE OR AUTHORITY (if applicable)	11. ENCLOSURES (if any)
LEGADMINMAN, Chapter 19	(1) Statement of Tuition and Fees

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of orginator and sign 3 lines below text)

1. Per the reference, the enclosure is forwarded for your action.

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-5.--Sample For Tuition Payments for FLEP Students

ADMINISTRATIVE ACTION (5216)
NAVMC 10274 (REV. 3-93) (EF)
Previous editions will be used
SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO.	2. SSIC/FILE NO.
ADMIN	7431
3. DATE 20040801	

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)
Captain Justin B. Advocate
123 45 6789/4401

5. ORGANIZATION AND STATION (Complete address)
Inspector-Instructor
CO I, 3d Bn, 24th Mar
160 White Bridge Road
Nashville, TN 37209

6. VIA (As required)

7. TO:
Commandant of the Marine Corps
Training and Education Command
Financial Management Branch C464
3300 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT
Reimbursement in Connection with the Funded Law Education Program

9. COPY TO (As required)

10. REFERENCE OR AUTHORITY (if applicable)
LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)
(1) Required Book List
(2) Book Payment Receipts

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of orginator and sign 3 lines below text)

1. Per the reference, I request reimbursement for book payments for the 2004 Fall semester in the amount of $96.35.

2. Upon reimbursement of the required amount, the balance reimbursable for the 2004-2005 school year will be $53.65.

3. Enclosure (1) verifies the necessity of payments shown in enclosure (2).

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-6.--Sample for Book Payments for FLEP Students

ADMINISTRATIVE ACTION (5216)
NAVMC 10274 (REV. 3-93) (EF)
Previous editions will be used
SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO.	2. SSIC/FILE NO.
ADMIN	7431

3. DATE
20040801

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)
Captain Justin B. Advocate
123 45 6789/4401

5. ORGANIZATION AND STATION (Complete address)
Inspector-Instructor
CO I, 3d Bn, 24th Mar
160 White Bridge Road
Nashville, TN 37209

6. VIA (As required)

7. TO:
Commandant of the Marine Corps
Training and Education Command
Financial Management Branch C464
3300 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT
Payment and/or Reimbursement for Bar Review and Examination Fees

9. COPY TO (As required)

10. REFERENCE OR AUTHORITY (if applicable)
LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)
(1) Bar Review Invoice
(2) Bar Examination Invoice

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of orginator and sign 3 lines below text)

1. Per the reference, the enclosures are forwarded for your action.

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-7.—-Sample for Bar Review/Examination Fees for FLEP/ELP(L) Students

CHAPTER 20

CERTIFICATION AND DESIGNATION OF JUDGE ADVOCATES; EVIDENCE OF GOOD STANDING

PARAGRAPH PAGE

CERTIFICATION OF OFFICERS UNDER UCMJ, ARTICLES 26 AND 27 20000

DESIGNATION OF MARINE CORPS OFFICERS AS JUDGE ADVOCATES. 20001

EVIDENCE OF GOOD STANDING WITH LICENSING AUTHORITY 20002

CHAPTER 20

CERTIFICATION AND DESIGNATION OF JUDGE ADVOCATES; EVIDENCE OF GOOD STANDING

20000. CERTIFICATION OF OFFICERS UNDER UCMJ, ARTICLES 26 AND 27. For instructions concerning certification of officers under the UCMJ, Articles 26 and 27, see SECNAVINST 1120.9_.

20001. DESIGNATION OF MARINE CORPS OFFICERS AS JUDGE ADVOCATES. For instructions concerning designation of officers as judge advocates of the Marine Corps, and for policy concerning granting of service credit, thereto, see SECNAVINST 1120.9_.

20002. EVIDENCE OF GOOD STANDING WITH LICENSING AUTHORITY

1. Judge advocates have a duty to maintain a status with the licensing authority admitting that officer to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia, such that the individual officer is considered to be in good standing with that licensing authority at all times. At a minimum, good standing means the individual: (1) is subject to the jurisdiction’s disciplinary review process; (2) has not been suspended or disbarred from the practice of law within the jurisdiction; (3) is up-to-date on the payment of all required fees; (4) has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived); and (5) has met any other requirements the cognizant authority set for eligibility to practice law. So long as these conditions are met, a judge advocate may be "inactive" as to the practice of law within a particular jurisdiction and still be in good standing.

2. Pursuant to JAGINST 5803.2_, every two years, all Marine Corps judge advocates are required to provide proof of good standing with their licensing authority to the Marine Corps Rules Counsel, Director, JA Division, HQMC. The next required reporting period of good standing is 15 January to 1 April 2006.

3. A judge advocate shall immediately report to the Marine Corps Rules Counsel, Director, JA Division, HQMC, if any jurisdiction in which the judge advocate is or has been a member in good standing commences disciplinary investigation or action against him or her or if the judge advocate is disciplined, suspended, or disbarred from the practice of law in any jurisdiction. Failure of a judge advocate to

comply with these requirements may result in professional disciplinary action under JAGINST 5803.1_, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, processing for administrative separation, or court-martial.

4. Student judge advocates (MOS 4401) are required to submit either an original letter of good standing or original certificate of admission from their licensing authority to the CMC (JAS). The deadline for submission for PLC and OCC (Law) student judge advocates is prior to TBS graduation. The deadline for FLEP and ELP student judge advocates is within 2 weeks of receiving their notification of admission to the practice of law from their licensing authority.

5. Supervisory judge advocates may require any officer over whom they exercise authority to establish that s/he continues to be in good standing with that officer’s licensing authority.

CHAPTER 21

JUDGE ADVOCATE SUPPORT AND PERSONNEL

	PARAGRAPH	PAGE
SCOPE	21000	21-3
OCCUPATIONAL FIELD SPONSOR.	21001	21-3
CONTINUING LEGAL EDUCATION.	21002	21-4

CHAPTER 21

JUDGE ADVOCATE SUPPORT AND PERSONNEL

21000. SCOPE

1. This chapter clarifies the relationship between individual judge advocates, the occupational field sponsor, and the Personnel Management Division (MM), Headquarters, U.S. Marine Corps.

2. Additionally, this chapter details the Marine Corps program for continuing legal education courses.

21001. OCCUPATIONAL FIELD SPONSOR

1. The 4400 occupational field sponsor is the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). As such, the SJA to CMC is responsible for representing the interests of the judge advocate community. This includes recommendations to the monitors at MM regarding the number of lawyers, legal administrators and legal clerks at each command, as well as who, specifically, should fill each billet. In order to fulfill this responsibility effectively, the SJA to CMC has designated MOS specialists.

2. The Judge Advocate Support (JAS) Branch Head is the occupational field manager and is responsible for coordination of the personnel management efforts of the entire community, as well as the MOS specialist for the field grade 4402s. The Deputy Branch Head, JAS, handles all company grade judge advocates. The Law Office Manager/Senior Legal Administrative Officer (JA-2) is the warrant officer and chief warrant officer MOS specialist. The Legal Services Chief (JA-3) is the MOS specialist for the 4400 enlisted community.

3. The MOS specialists provide expert advice to the monitors at MM on optimum staffing levels at the various commands and law offices around the Marine Corps. Moreover, the MOS specialists work closely with the monitors, making specific recommendations concerning personnel to fill each billet.

4. Marines are strongly encouraged to contact their MOS specialist to discuss career options both in the short and long terms. MOS specialists need all relevant information concerning a Marine's interests, family situation, and experience levels to effectively advise the monitors regarding PCS moves.

5. In addition to manning, the MOS specialists have responsibility for structure. In conjunction with Total Force Structure Division, Marine Corps Combat Development Command, MOS specialists optimize the table of organization of Marine Corps legal offices.

21002. CONTINUING LEGAL EDUCATION

1. JAS is responsible for the Marine Corps continuing legal education efforts. JAS works with the Training and Education Division (T&E), Marine Corps Combat Development Command, to validate courses for inclusion on the Training Input Plan (TIP). Courses at the Naval Justice School, the Army Judge Advocate General's School, the Air Force Judge Advocate General's School and various civilian institutions are included in the TIP, and become officially sanctioned training classes.

2. T&E provides funding for a specific number of quotas for selected courses. However, not all courses on the TIP have funded quotas. JAS works closely with T&E to obtain quotas for courses, and to see that an efficient distribution of quotas is made over the selected courses.

3. Each of the schoolhouses has a different reservation system for seats in its courses. JAS is the Marine Corps point of contact for each schoolhouse. All Marines must go through JAS to make reservations in the various courses on the TIP. This is imperative in order to maintain the validation of the courses with T&E. The accounting data for T&E-funded quotas is obtained from T&E and then distributed to the field by JAS. A T&E-funded quota is not necessary to attend a course. Indeed, many courses on the TIP do not have T&E-funded quotas allocated. An individual command must fund the attendance of a Marine at a school for which no T&E-funded quota is available. In any case, JAS will make the reservations with the schoolhouse, upon request by the field.

4. T&E will fund attendance by Marines stationed overseas, if two conditions are met. First, the course must be more than 14 calendar days in length, including any weekends or holidays. Second, the Marine attending must have more than 1 year left on station overseas. For purposes of this paragraph, Hawaii duty stations are not considered overseas.

5. Suggestions for new courses to be added to the TIP should be forwarded to JAS not later than 1 February each year.

CHAPTER 22

ORGANIZATION OF LEGAL SERVICES IN THE DEPARTMENT OF THE NAVY

	PARAGRAPH	PAGE
SCOPE	22000	22-3
GENERAL COUNSEL OF THE NAVY	22001	22-3
JUDGE ADVOCATE GENERAL OF THE NAVY.	22002	22-4
OFFICE OF THE COUNSEL FOR THE COMMANDANT OF THE MARINE CORPS	22003	22-4
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS	22004	22-5

2000. SCOPE. This chapter identifies the organizations responsible for providing legal support within the Department of the Navy (DON) and summarizes their areas of responsibility.

22001. GENERAL COUNSEL OF THE NAVY. The General Counsel (GC) is a Civilian Executive Assistant appointed by and directly responsible to the Secretary of the Navy (SecNav) and is in the statutory line of succession for SecNav. The GC is the principal legal advisor to SecNav and is the Designated Agency Ethics Official (DAEO) for the DON. The GC provides legal advice, counsel, and guidance to SecNav and DON civilian executive assistants and their staffs, and provides services in the areas of business law, acquisitions, environmental law, civilian personnel law, real, personal, and intellectual property law, and litigation involving these issues. In appropriate cases, the GC shares responsibility with the Judge Advocate General of the Navy for liaison with the Attorney General and Department of Justice. There is a considerable overlap of responsibilities at both the headquarters level and in the field. Specific duties of the GC are set forth below as established by SECNAVINST 5430.25D and U.S. Navy Regulations, 1990, article 0327.

1. Business and Commercial Law. The GC provides legal services throughout the DON for business and commercial law including the following:

a. The acquisition, custody, management, transportation, taxation, and disposition of real and personal property;

b. The procurement of services, including the fiscal, budgetary and accounting aspects thereof (except tort and admiralty claims arising independently of contract);

c. Operations of the Military Sealift Command, the Office of the Comptroller of the Navy, and the Naval Data Automation Command;

d. All matters in the field of patents, inventions, trademarks, copyrights, royalty payments and related matters; and

e. Procurement aspects of foreign military sales, issues related to research and development, NATO standardization agreements, and Arms Export Control Act issues.

2. Civilian Personnel Law. The GC provides legal services in the field of civilian personnel law, including labor-management relations and equal employment opportunity matters at Headquarters, DON, and in coordination with the Navy JAG, throughout the remainder of the Navy.

3. Contract Claims and Litigation. The GC provides guidance to DON procuring activities in the proper method of evaluating, processing and documenting contract claims asserted by or against the DON.

4. Litigation. The GC is responsible for:

a. All DON litigation before the Armed Services Board of Contract Appeals.

b. With the concurrence of the Attorney General, the conduct of all other Navy litigation arising out of business, patent, or civil personnel matters.

22002. Judge Advocate General of the Navy. The JAG provides services in the areas of military justice, operational and international law, administrative law, military personnel law, special programs, claims, legal assistance, admiralty, health care and litigation involving such issues. The JAG oversees the professional ethics of all Navy and Marine Corps judge advocates including civilian attorneys who practice under JAG supervision. The JAG may decertify a judge advocate if s/he determines that the judge advocate is not competent to act as an attorney on behalf of the Navy. The Deputy Judge Advocate General (DJAG) assists the JAG in his/her duties and commands the Naval Legal Service Command which provides military justice, claims and legal assistance services to the Fleet. The DJAG is also designated as a Deputy DAEO for the Navy. Specific duties of the JAG are set forth below as established by SECNAVINST 5430.27A and U.S. Navy Regulations, 1990, article 0331.

1. Litigation. The JAG keeps the GC informed of the status of all litigation under the JAG's cognizance, including all proposed Navy appeal recommendations to the Department of Justice. In cases designated "of major and continuing concern to the Secretary," the GC and JAG share the responsibility for liaison with the Attorney General and Department of Justice.

2. Supervision of Legal Services. In consultation with the JAG, DJAG sets the policy governing the structure, maintenance and performance of duties of the Navy Legal Service Command.

22003. Office of the Counsel for the Commandant of the Marine Corps. The Counsel for the Commandant (CL) advises, provides legal services, and renders legal decisions to CMC, HQMC staff agencies, and field commands regarding business and commercial law, including all matters within the cognizance of the GC for DON, of which the office is a part. The CL's duties as a Deputy DAEO for the Marine Corps are set forth in chapter 11. Other duties of CL are set forth below.

1. Acquisition. CL plans and develops comprehensive legal programs to support the Marine Corps relating to the acquisition of services, supplies, facilities, and other property for the Marine Corps.

2. Business and Commercial Law. CL provides legal advice and services to the CMC, HQMC staff agencies, and field activities in business and commercial law, standards of conduct and conflicts of interest. CL represents the Marine Corps in relations with other departments and activities of the Government, professional associations, industry associations, contractors and other business concerns relating to:

a. The acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services including the fiscal, budgetary, and accounting aspects thereof (except tort claims that arise independently of contract);

b. Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments and similar matters;

c. All aspects of environmental law, civilian personnel law, and industrial security; and

d. Serves as a legal consultant and advisor to CMC and other Marine Corps officials on policy proposals and program operations relating to the commercial interests of the Marine Corps.

22004. Staff Judge Advocate to the Commandant of the Marine Corps. The SJA to CMC acts as legal advisor to CMC on military justice matters, administrative law, operational law and legal assistance matters. The SJA to CMC is also the Director of the Judge Advocate Division (JA). The SJA to CMC provides supervision and management of the Military Law, Operational Law, Research and Civil Law, Legal Assistance, Judge Advocate Support, and Information, Plans and Programs branches of JA, and of the Chief Defense Counsel of the Marine Corps. The duties of the SJA to CMC as a Deputy DAEO for the Marine Corps are set forth in chapter 11. Pursuant to JAGINST 5803.1, the SJA to CMC also acts as "Rules Counsel" in legal professional ethics and complaints against Marine judge advocates. Also per agreement with JAG and CMC, the SJA to CMC conducts UCMJ, Article 6 visits to Marine Corps commands on behalf of he JAG.

1. Military Law Branch (JAM). JAM provides legal advice and assistance to HQMC staff agencies and the field on military law and related matters, to include military justice, administrative law matters related to military justice, promotions and reductions, appeals of competency review boards and complaints of wrongs or redress of wrongs submitted pursuant to Article 138, UCMJ, or Article 1106, U.S. Navy Regulations, 1990. JAM provides a working and voting group member to the Joint Service Committee, which conducts the annual review of the Manual for Courts-Martial and reviews legislative and regulatory proposals affecting military justice. JAM also reviews and provides comment on appeals of nonjudicial punishment and matters

forwarded by the Board for Correction of Naval Records and Naval Discharge Review Board.

2. Operational Law Branch (JAO). JAO provides legal advice and assistance on operational law and related matters, to include international law/relations and the legal aspects of military plans, operations and training; law of war; rules of engagement; combined, joint, multiservice and service doctrine; security assistance technology transfer; personnel exchange program; host nation support of U.S. forces; foreign tax issues; environmental matters related to operations and operating forces; support to other governments; international agreements; noncombatant evacuation operations; base rights overseas; pre-deployment training and preparation; and mobilization.

3. Research and Civil Law Branch (JAR). JAR provides legal advice and assistance to HQMC staff agencies and to the field on administrative law matters, to include personnel law, environmental law, Reserve establishment, physical disability, standards of conduct and Government ethics, Privacy Act, Freedom of Information Act, retired and veterans' affairs, decedent and casualty affairs, legislation, claims, off-duty employment, gifts, trademark, dependency determinations, and related matters.

4. Legal Assistance Policy Branch (JAL). The mission of JAL is to (1) to assist and advise the SJA to CMC on all legal assistance policies, procedures and related matters, implement and supervise the Marine Corps Legal Assistance and Tax Programs, provide guidance to legal assistance attorneys and staff in the field, formulate and disseminate legal assistance and tax policies and procedures, inspect the effectiveness of legal assistance programs, coordinate and oversee the Regional Legal Assistance Councils, prepare legal assistance legislative initiatives, and act as the Marine Corps and JA representative on the Armed Forces Tax Council, the Marine Corps Quality of Life Working Group, the American Bar Association Standing Committee on Legal Assistance for Military Personnel and other legal assistance related agencies; and (2) supervise the operation of the Henderson Hall Legal Assistance Office and the Individual Mobilization Augmentee (IMA) Reserve Detachment assigned to JAL.

5. Information, Plans and Programs Branch (JAI). JAI provides legal office management to the Marine Corps legal community in the field by incorporating business practices through proper structuring and employment of personnel, improved implementation of information technology, improved management of information systems, development and implementation of programs to increase the quality and efficiency of legal services. JAI also maintains and operates the legal reference library.

6. Law Office Manager (JA-2)/Legal Management Branch (JAA). JA-2 provides advice and assistance to HQMC staff agencies and the field on

enlisted administrative separations; reviews non-criminal investigations received from the field; and advises the field on publications and the Performance Evaluation System. JAA provides daily office management for JA through correspondence tracking; budget preparation and execution; internal information systems coordination and support; appointment scheduling; and processing of personnel matters for those working within the division.

7. Judge Advocate Support Branch (JAS). JAS coordinates personnel support of active duty and Reserve judge advocates by providing advice and assistance on matters such as judge advocate certification, recruitment, training, assignments, and personnel administration; legal review of Marine Corps policies, directives, procedures, and practices concerning judge advocate support matters; coordination and supervision of programs for Reserve judge advocates not on active duty; and advice on adequacy of judge advocate billets within tables of organization.

8. Chief Defense Counsel of the Marine Corps. Exercises general supervision over the professional development of Marine Corps judge advocates and support personnel engaged in performing defense functions. Maintains liaison with Headquarters staff agencies and with field commands on matters pertaining to personnel administration of defense counsel to include their assignment, training, and career planning.

CHAPTER 23

INTERNATIONAL AND OPERATIONAL LAW

	PARAGRAPH	PAGE
SCOPE.	23000	23-2
OPERATIONAL LAW - GENERAL.	23001	23-3
RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE. .	23002	23-4
DOMESTIC OPERATIONAL LAW.	23003	23-5
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INTERNATIONAL LAW – GENERAL.	23005	23-6
LAW OF WAR	23006	23-6
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WEAPONS	23008	23-9

TABLE

23-1 COMBATANT COMMAND, MARINE COMPONENT, SJA, WEBSITE 23-3

CHAPTER 23

INTERNATIONAL AND OPERATIONAL LAW

23000. SCOPE. Due to the broad range of International and Operational Law issues and availability of other resources, this chapter provides only limited guidance on a select number of common International and Operational Law issues. Reference is made to more detailed guidance, where available – many of these resources are available online. Most importantly, units should always consult their assigned Staff Judge Advocate for International and Operational legal advice. Some of the best overall International and Operational Law resources include:

1. Operational Law Handbook (published annually by The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS)), available online at http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset under "Other Publications", and on the HQMC Judge Advocate Division (JAO) website (url below).

2. Deployed Judge Advocate Resource Library CD (published annually by the Center for Law and Military Operations (CLAMO)).

3. Deployed MAGTF JA Handbook (published by CLAMO).

4. Domestic Operational Law (DOPLAW) Handbook for Judge Advocates (published by CLAMO).

5. Websites:

a. CLAMO (access requires registration through the website) unclassified / classified: www.jagcnet.army.mil / www.usarmy.smil.mil.

b. HQMC Judge Advocate Division (JAO) unclassified / classified: sja.hqmc.usmc.mil / www.hqmc.usmc.smil.mil/JA/JA_Home.htm.

c. Joint Electronic Library (DOD/CJCS directives, joint and other publications): www.dtic.mil/doctrine/index.htm.

d. TJAGLCS "Other Publications" at http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset has online, downloadable publications in numerous areas of military law, including International and Operational Law.

e. Naval Justice School, Newport, Rhode Island (NJS) publications are available at http://www.jag.navy.mil/html/njsnpthome.htm (requires logon and password for access – request through the site).

23001. OPERATIONAL LAW - GENERAL.

1. Operational Chain of Command. Upon deployment, units must be cognizant of the operational chain of command. With few exceptions, deployed Marine units fall under the operational command of the Marine component of the combatant command in whose theater they are deployed. For example, Marine units in the U.S. Central Command (USCENTCOM) Area of Responsibility (AOR) fall under Marine Forces Central Command (MARCENT). Most combatant commands have their own regulations, policies, and guidance on numerous issues, such as release authority on Freedom of Information Act (FOIA) requests, Law of War violation reporting and investigations, and media inquiries. In addition, the combatant command SJA usually issues legal guidance on a variety of topics. A legal annex is normally found in Annex E, and Rules of Engagement in Annex C, of the Combatant Command's Operation Orders (OpOrds). Combatant commands, their Marine components, cognizant SJAs, and websites are listed in Table 23-1. Most of the classified websites have links to the combatant command SJA sites, which have useful resources.

Combatant Command	**Marine Component**	**Cognizant SJA**	**Combatant Command Website** Unclassified / Classified
Regional Commands			
CENTCOM	MARCENT	MARCENT SJA	www.centcom.mil / www.centcom.smil.mil
EUCOM	MARFOREUR	MARFOREUR SJA	www.eucom.mil / www.eucom.smil.mil
NORTHCOM	MARFORNORTH	MARFORRES SJA (dual-hatted)	www.northcom.mil / www.northcom.smil.mil
PACOM	MARFORPAC	MARFORPAC SJA	www.pacom.mil / www.pacom.smil.mil
SOUTHCOM	MARFORSOUTH	MARFORSOUTH SJA	www.southcom.mil / www.southcom.smil.mil
Functional Commands			
JFCOM	MARFORLANT	MARFORLANT SJA	www.jfcom.mil / www.jfcom.smil.mil
SOCOM	MCSOCOM DET ONE	TBD	www.socom.mil / www.socom.smil.mil
STRATCOM	MARFORSTRAT	MARFORLANT SJA (pending MCCDC SJA)	www.stratcom.mil / www.stratcom.smil.mil
TRANSCOM	Not applicable		www.transcom.mil / www.transcom.smil.mil

Table 23-1

2. Friendly Fire Investigations. Under DOD Instruction 6055.7, *Accident Investigation, Reporting, and Record Keeping*, the combatant commander convenes a legal investigation on friendly fire incidents (par E4.7). Service or other commanders may still convene a safety investigation into friendly fire incidents, in consultation with the combatant commander. However, the combatant commander is the release authority for information in the legal investigation for media

queries, Freedom of Information Act requests, and next of kin notifications. Refer to Chapter 8 for further guidance on investigations.

3. Claims. Refer to the following:

a. DOD Directive 5515.3 – Settlement of Claims Under 10 USC 2733 and 2734

b. DOD Directive 5515.6 - Processing Tort, Contract and Compensation Claims Arising out of Operations in Nonappropriated Fund Actions

c. DOD Directive 5515.8 – Single Service Assignment of Responsibility for Processing of Claims

d. DOD Directive 5515.9 – Settlement of Tort Claims

e. JAGINST 5890.1 – Administrative Processing and Consideration of Claims on Behalf of and Against the United States

f. Chapter VIII, JAGMAN - General claims provisions, including foreign claims

g. Chapter X, paragraph 1010g, JAGMAN – Solatia payments

h. Chapter XII, JAGMAN - Admiralty claims

i. Chapter 13 – Claims, LEGADMINMAN

j. Claims Course Deskbook, published by The Judge Advocate General's Legal Center and School, and available online at http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset under "Other Publications."

4. Fiscal Law. The complexities of fiscal law continue in a deployed environment. If at all possible, a judge advocate trained in fiscal law should be available to provide legal advice during a deployment. The Operational Law Handbook published by TJAGLCS discusses fiscal law, but more detail is provided in the Fiscal Law Course Deskbook, also published by TJAGLCS, and available online at http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset under "Other Publications."

23002. RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE.

1. Rules of Engagement. On deployment, the judge advocate, in coordination with the operations and intelligence officers, is usually the primary action officer for developing Supplemental Rules of Engagement requests and for briefing the commander, staff and Marines on Rules of Engagement. Refer to Chairman of the Joint Chiefs of

Staff Instruction (CJCSI) 3121.01A, *Standing Rules of Engagement for U.S. Forces*. In its entirety, the document is classified SECRET and available at the Judge Advocate Division's classified homepage: www.hqmc.usmc.smil.mil/JA/JA_Home.htm (linked from HQMC's homepage). Enclosure (A) is unclassified and reprinted in the Operational Law Handbook's Rules of Engagement chapter.

2. Rules for the Use of Force (RUF). For the use of deadly force and the carrying of firearms by DOD/DON personnel performing law enforcement, security duties, or personal protection, refer to DOD Directive 5210.56, SECNAVINST 5500.29C, and MCO 5500.6F. For Rules on the Use of Force by DOD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States, see CJCSI 3121.02. For Counterdrug Support Operations, and Domestic Support Operations, refer also to Enclosures H and I of CJCSI 3121.01A, *Standing Rules of Engagement for U.S. Forces.*

23003. DOMESTIC OPERATIONAL LAW. Refer to: (1) the Domestic Operations chapter in the latest Operational Law Handbook, (2) the Domestic Operational Law (DOPLAW) Handbook for Judge Advocates, and (3) Enclosure I – Domestic Support Operations of CJCSI 3121.01A, *Standing Rules of Engagement for U.S. Forces.* Since USNORTHCOM was created, many domestic deployments now require a deployment order approved by the Secretary of Defense when assigned forces are transferred from one combatant command to another, e.g., USJFCOM to USNORTHCOM. In addition, Realistic Urban Training (RUT) in civilian urban settings must comply with the DOD Policy for Realistic Training Off Federal Facilities contained in Secretary Defense Memorandum of 26 April 2000, posted on the JAD (JAO) website.

23004. WOMEN IN COMBAT.

Refs: (a) FY94 NDAA (PL 103-160, sec 541-542)
(b) SECDEF Memo 13 Jan 94 – Direct Ground Combat Rule
(c) SECNAVINST 1300.12B - Assignment of Women
(d) MCO P13008R, Chapter 5 – Women Marines Classification, Assignment, and Deployment Policy

1. Law. The National Defense Authorization Act for Fiscal Year 1994 (ref (a)) repealed the statutory limitation on women in combat, the "combat exclusion law" (formerly in 10 USC 6015). Congress authorized the Secretary of Defense (SECDEF) to change policy to assign women to any combat unit, vessel or platform.

2. Policy. SECDEF established DOD policy, the Direct Ground Combat Rule, in SECDEF Memorandum of 13 Jan 94, entitled "Direct Ground Combat Definition and Assignment Rule" (ref (b)). The Rule is that "Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from

assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground...Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel." Navy and Marine Corps policy is in references (c) and (d).

23005. INTERNATIONAL LAW - GENERAL. International Law is generally the law governing relations between nations, international organizations, and persons. The most common areas of international law in which a judge advocate practices are the Law of War and International Agreements, in particular Status of Forces Agreements, discussed below. See also Chapter X, International Law, of JAGINST 5800.7D (JAGMAN) for a discussion of select International Law topics.

23006. LAW OF WAR.

1. Marine Corps Law of War Program. Refer to MCO 3300.4, and MARADMIN 182/04, for details on the Marine Corps Law of War Program. This Program fulfills training requirements mandated by the Law of War and DOD policy. As a matter of DOD policy, U.S. Armed Forces are to comply with the Law of War during all armed conflicts, however such conflicts are characterized, and to comply with the principles and spirit of the Law of War during all other operations. Judge advocates should ensure that deploying units receive follow-on Law of War training prior to deployment, that key personnel receive specialized training, and that judge advocates receive detailed training in accordance with the Program.

2. Law of War Reporting and Investigation Requirements. The Law of War and DOD policy have a low threshold for mandatory reporting and investigation of reportable incidents. Reportable incidents are defined as possible, suspected, or alleged violations of the Law of War. All reportable incidents should be reported and investigated in accordance with such requirements, and per guidance provided by the operational chain of command. See Enclosure 6 of MCO 3300.4.

3. Property Captured from the Enemy.

a. Individual War Souvenirs. Pursuant to 10 USC 2579, the Deputy SECDEF issued interim guidance on individual war souvenirs that applies to enemy material in Iraq. The memorandum, dated 11 February 2004, is available on the JAD (JAO) website, and remains effective until a DOD Directive is implemented.

b. Unit War Trophies and Historically Significant Trophies. SECDEF and Service Secretary approval is required for importation of unit war trophies and historical artifacts per the Defense Transportation Regulations, DOD Directive 4500.9R, Chapter 503,

paragraph C(8). Requests for approval should be submitted through the operational chain of command. SECDEF delegated to the Commander, USCENTCOM, authority to approve importation of historical artifacts from Iraq to service component museums (per SECDEF WASH DC message 210145Z FEB 04, posted on JAD (JAO) website).

4. Child Soldiers. Per the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldier Protocol), the U.S. and other State parties shall take all feasible measures to ensure members of their Armed Forces under 18 years of age do not take a direct part in hostilities. MARADMIN 030/03 is the U.S. Marine Corps policy that implements this requirement. The commander should weigh the mission requirements against the practicability of diverting 17 year-old Marines from combat. Factors to consider may include, but are not limited to: the tactical situation; the manpower needs of the unit; the danger to the service member; the impact on unit cohesion if the service member were to be removed from the unit; the reasonable ability of the unit to exclude the 17 year-old Marine from taking a direct part in hostilities; and any other relevant criterion. Nothing shall be construed to limit the commander's inherent authority and obligation to use all necessary means available and to take all appropriate actions for unit self-defense. Regarding child soldiers of the enemy, the age of an enemy soldier does NOT render him an unlawful target if he can otherwise be lawfully engaged in accordance with the rules of engagement.

5. Law of War References.

a. MCO 3300.4, *Marine Corps Law of War Program,* of 20 Oct 03.
b. MARADMIN 182/04, *Marine Corps Law of War Program*, (202020Z Apr 04).
c. Treaties Governing Land Warfare, DA PAM 27-1, 1956.
d. The Law of Land Warfare, FM 27-10, 1956.
e. War Crimes Investigations, MCRP 4-11.8B, 1998.
f. Enemy Prisoners of War and Civilian Internees, MCRP 4-11.8C, 1998.
g. Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees, AR 190-8/OPNAVINST3461.6/AFJI 31-304/MCO 3461.1, 1997.
h. DOD Law of War Program, DODD 5100.77, 1998.
i. DOD Enemy POW Detainee Program, DODD 2310.1, 1994.
j. Implementation of the DOD Law of War Program, CJCSI 5810.01B, 25 March 2002.
k. Interim Guidance on Individual War Souvenirs, Deputy Secretary of Defense Memorandum, 11 February 2004.
l. MARADMIN 030/03, *17 Year Old Marines in Combat*, (231139Z Jan 03).

23007. INTERNATIONAL AGREEMENTS. Prior to deployment to a foreign country, US forces should be aware of and understand the meaning of

any applicable international agreements, particularly those governing their status and jurisdiction while in the host nation.

1. Websites. International Agreements are posted on CLAMO, JAD, and some Combatant Command websites (urls provided above in Scope and Operational Law paragraphs). The classified websites are the most comprehensive, as many agreements are classified.

2. Status of Forces Agreement. A Status of Forces Agreement (SOFA) is an international agreement that defines the legal position of a visiting military force in a foreign country. A SOFA may be bilateral (between two nations) or multilateral (between many nations, such as the NATO SOFA). SOFAs set forth criminal and civil jurisdiction, claims, taxes, entry and exit, licenses, registration, customs, etc. Types of jurisdiction can vary – in many instances, US forces can be subject to host nation criminal law and process – which is why a SOFA should be understood before deployment. In addition, several NATO countries have supplementary bilateral agreements with the US, in addition to the NATO SOFA. SOFAs and Foreign Criminal Jurisdiction are also discussed in paragraphs 1009 and 1010 of the JAGMAN.

3. International Criminal Court. Most SOFAs do not afford any protection from prosecution by the International Criminal Court (ICC). The ICC purports to exercise jurisdiction over US persons who commit offenses covered by the ICC Treaty, if those offenses are committed in the territory of an ICC Party or in the territory of a non-Party State, if that State consents to ICC jurisdiction. Moreover, ICC Parties are obligated to abide by an ICC request to surrender anyone suspected of an ICC crime. Thus, US service members suspected of a war crime and deployed to a country that is an ICC Party, are at risk of surrender by that country to the ICC. To help overcome this problem, the USG is aggressively pursuing Article 98 Agreements. An Article 98 Agreement precludes a country from turning over a US citizen to the ICC without USG consent. A by-country listing of Article 98 Agreement status is posted on the JAD (JAO) classified website.

4. Acquisition and Cross-Servicing Agreements (ACSA). 10 USC 2342 provides authority for government-to-government acquisitions and cross-servicing agreements for mutual logistics support between US forces and eligible countries' forces. Eligible countries are NATO countries and SECDEF-designated non-NATO countries. Under an ACSA, support, supplies, and services between countries may be reimbursed in kind, by trade of equal value, or by cash. Additionally, ACSAs eliminate the requirement for certain contractual paragraphs that are otherwise required by the Federal Acquisition Regulations. ACSA restrictions include: (1) the total number of liabilities the US may accrue under Title 10 is limited, except during a period of active hostilities; (2) the amount of acquisitions and cross-servicing that a service component may conduct annually is allocated by the cognizant Combatant Commander; (3) ACSAs cannot be used as a substitute for normal sources of supply, or as a substitute for foreign military

sales procedures; and (4) “Major end items” may not be transferred under an ACSA. DOD Directive 2010.9 applies to ACSAs.

5. Negotiation and Conclusion. DOD personnel shall neither negotiate nor conclude an international agreement, nor request another USG organization to negotiate or conclude an international agreement, without prior written approval by the DOD official who is assigned approval responsibility per DOD Directive 5530.3, *International Agreements*, of 11 Jun 87 (with Ch. 1, dated 17 Aug 91). SECNAVINST 5710.25A, *International Agreements*, of 2 Feb 95, sets forth the authorities that may approve the negotiation and conclusion of international agreements within the DoN. SECNAV has delegated the authority to negotiate and conclude certain international agreements to CMC. CMC has not re-delegated this authority except in the case of the Marine Corps Foreign Personnel Exchange Program. DC PP&O has been delegated the authority to negotiate and conclude these international agreements. CMC retains the authority for all other international agreements for which CMC has authority to negotiate and conclude.

6. Case Act Reporting. Pursuant to the Case-Zablocki Act (Pub. L. 92-403; 1 U.S.C. 112b)(the Case Act), any department or agency of the USG that enters into any international agreement on behalf of the USG shall transmit to the Department of State the text of such international agreement not later than 20 days after the international agreement has been signed. DoS must transmit all international agreements, other than treaties, to Congress no later than 60 days after the international agreement enters into force. SECNAVINST 5710.25A, *International Agreements*, of 2 Feb 95, designates the Navy JAG as the Central Office of Record and the Central Repository for all DoN international agreements, including those CMC has negotiated and concluded. Navy JAG also is tasked with conducting all Case Act notifications. SECNAVINST 5710.25A tasks the SJA to CMC (JAO) to provide required legal support to CMC for all efforts associated with those international agreements CMC is authorized to negotiate and conclude. Therefore, all international agreements concluded by CMC, or pursuant to a CMC grant of authority, should be forwarded to the SJA to CMC (JAO) as soon as possible after they have been concluded, to assist in meeting the 20-day notification period imposed by the Case Act. The Case Act requires all related documents, including all accompanying papers, such as agreed minutes, exchanges of notes, or side letters and background statements. Congress also has requested background statements that include information explaining the agreement, the negotiating history, the effect of the agreement, and a precise citation of legal authority to be submitted.

23008. WEAPONS.

1. Weapons Reviews. Weapons and ammunition must pass a legal review before they can be used in operations. Weapons and ammunition issued through regular military procurement and supply channels undergo legal review. In contrast, there have been instances when units have obtained items without legal reviews, e.g., they bought items “off the

shelf" or obtained them directly from vendors without going through Marine Corps Systems Command (MCSC). Such items should not be used in operations.

a. Legal Review. DOD Directive 5000.1 and SECNAVINST 5000.2B require the Navy Judge Advocate General (JAG) (Code 10) to conduct legal reviews of all weapons, weapon systems, and ammunition before procurement by the Department of the Navy or Marine Corps. The review ensures that the items are consistent with domestic and international law, particularly the law of war. For Marine Corps items, Marine Corps Systems Command forwards requests for legal reviews to the Navy JAG (Code 10) via SJA to CMC (JAO) for endorsement. The legal review determines whether the item complies with the law of war principles of unnecessary suffering and distinction: (1) the item cannot cause injury or death that is manifestly disproportionate to its intended use, and the military advantage or military effectiveness expected to be gained from its use; and (2) the item must be controlled to ensure it can be applied against lawful military objects, and not indiscriminately affect the civilian population, or civilians not taking an active part in hostilities. The legal review also addresses whether any other rule of law, domestic or international, would preclude or restrict the item's use.

b. Arms Control Treaty Review. DOD Directive 2060.1 and SECNAVINST 5710.23C require that all DOD activities undergo an arms control treaty review, separate and distinct from the Navy JAG legal review. The Naval Treaty Implementation Program (NTIP) conducts this review for DoN activities. If NTIP believes the activity, such as use of a particular weapon or ammunition, reasonably raises an arms control issue, the matter must be brought to an Office of the SECDEF (OSD) Compliance Review Group for approval.

2. US Landmine Policy and Law.

a. On 27 February 2004, the Administration announced (via a DoS White Paper and fact sheet) the new US landmine policy that will eliminate from the US arsenal persistent (dumb) landmines of all types (i.e., anti-personnel (APL) and anti-vehicle). Until 2010, persistent APLs are stockpiled for use *only* in the Republic of Korea and persistent anti-vehicle landmines may be used outside of Korea only when authorized by the President. After 2010, the US will not employ any type of persistent landmine.

b. The new US mine policy will not impact the following USMC mines: M692/731 Area Denial Anti-personnel Mine (ADAM) (smart APL); M718/741 Remote Anti-armor Munition (RAAM) (smart anti-vehicle); and CBU-78 "Gator" (air delivered, smart mixed). The new US mine policy will impact the following USMC mines: M15/19/21 anti-vehicle mines (neither self-destructing nor self-deactivating); and M16/18 APLs (neither self-destructing nor self-deactivating).

c. The M18 claymore is still authorized when employed in a manner consistent with a self-destructing, self-deactivating (smart) mine (i.e., command detonated or trip wire mode not exceeding 72 hours while monitored and in proximity of emplacing unit). This use is in accordance with the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or To Have Indiscriminate Effects (CCW of 1980), and its Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices As Amended on 3 May 1996 (Protocol II - Amended 1996; also known as the Amended Mine Protocol). The US is a party to the Amended Mine Protocol (ratified by the President in 1999 with the advice and consent of the Senate). However, the US is neither a party nor signatory to the Ottawa Mine Ban Treaty of 1997, which bans all APLs (including smart), but does not prohibit anti-vehicle mines (smart or dumb).