

**FLORIDA NATIONAL GUARD  
REGULATION 27-10**



# **MILITARY JUSTICE**

1 June 2006

Joint Forces Headquarters - Florida  
Office of the Staff Judge Advocate  
99 Marine Street  
St. Augustine, Florida 32084

**UNCLASSIFIED**

LEFT BLANK INTENTIONALLY



DEPARTMENTS OF THE ARMY AND AIR FORCE  
FLORIDA NATIONAL GUARD  
OFFICE OF THE ADJUTANT GENERAL  
POST OFFICE BOX 1008  
SAINT AUGUSTINE, FLORIDA 32085-1008

1 June 2006

MEMORANDUM FOR Commanders and Judge Advocates of the Florida National Guard

SUBJECT: Military Justice

1. The 2006 edition of the Florida National Guard Military Justice Regulation is transmitted herewith for your use. It contains a substantial revision of the previous version of the FNG Pamphlet 27-10 as well as the addition of other materials that will be useful in the handling of military justice actions.
2. While the goal of the military justice system is good order and discipline in our ranks, the meeting of that objective is tempered with the important need to protect the rights of the accused. The rules and guidance contained in this publication serves to achieve both objectives.
3. Although this regulation is written, to the greatest extent possible, for use by all personnel, it remains a legal document which, along with the Florida Code of Military Justice and the Manual for Courts-Martial, establishes the Florida National Guard's legal system. In our military justice system, judge advocates are the commander's primary asset. I do not expect commanders to invoke the military justice system without consulting and utilizing judge advocates; those who do not avail themselves of expert legal advice and assistance imperil themselves and their commands.
4. It is critical that an effective military justice system exist in the Florida National Guard. Experience has shown us that that a disciplined military force remains an absolute necessity to our state and nation. Proper use of the military justice system will significantly enhance our ability to complete our missions successfully. Take the time necessary to familiarize yourself with the contents of this new regulation.

A handwritten signature in dark ink, appearing to read "Douglas Burnett", is positioned above the typed name.

Encl

DOUGLAS BURNETT  
Major General, FLANG  
The Adjutant General

LEFT BLANK INTENTIONALLY

STATE OF FLORIDA  
DEPARTMENT OF MILITARY AFFAIRS  
Office of the Adjutant General  
State Arsenal, P.O. Box 1008  
St. Augustine, Florida 32085-1008

SJA

1 June 2006

DEPARTMENT OF MILITARY AFFAIRS  
FLORIDA NATIONAL GUARD REGULATION 27-10  
1 June 2006

MILITARY JUSTICE - Legal Administration of the Florida National Guard Discipline System - Use of the Florida Code of Military Justice for the Florida National Guard During Inactive Duty Training, Annual Training (When Not in Active Federal Service), Additional Duty for Special Workdays, and State Active Duty

Supersession: This Regulation supersedes Florida National Guard Pamphlet 27-10, dated 1 Sep 00, and all changes thereto.

Applicability: The provisions of this Regulation apply to all members of the Florida National Guard.

Suggested Improvements: The proponent of this Regulation is the Staff Judge Advocate, Department of Military Affairs. Users are invited to send comments and suggested improvements on Department of the Army Form 2028, Recommended Changes to Publications and Blank Forms, directly to the Staff Judge Advocate, Post Office Box 1008, St. Augustine, Florida 32085-1008.

TABLE OF CONTENTS

<u>TITLE</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
CHAPTER 1		
GENERAL INFORMATION		
Purpose	1-1	1
Jurisdiction	1-2	1
Definition of Terms	1-3	2
Responsibilities	1-4	2
Basic Principles of Military Justice	1-5	3
Right to Counsel	1-6	6
Unlawful Command Influence	1-7	6

<u>TITLE</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
CHAPTER 2		
INVESTIGATING OFFENSES AND PROCEDURES FOR INITIATING DISCIPLINARY ACTION		
Sources of Information	2-1	13
Command Responsibilities	2-2	13
Questioning Suspects and Witnesses, Generally	2-3	14
Article 31, Florida Code of Military Justice, Warning/ Right to a Lawyer	2-4	14
Written Statements	2-5	15
Oral Statements	2-6	17
Search and Seizure	2-7	17
Florida Army National Guard Military Police and Florida Air National Guard Security Forces	2-8	22
Handling and Safeguarding Evidence	2-9	23
CHAPTER 3		
NON-JUDICIAL PUNISHMENT PROCEEDINGS (Article 15, Florida Code of Military Justice)		
<b>PART I – Army National Guard Procedures</b>		
Purpose	3-1	33
Non-Punitive Measures	3-2	34
Personal Exercise of Discretion	3-3	35
Maximum Punishments	3-4	35
Florida Army National Guard Non-Judicial Punishment Procedures	3-5	36
Formal Proceedings for Florida Army National Guard	3-6	36
Florida Army National Guard Summarized Proceedings	3-7	40
Suspension, Mitigation, Remission and Setting Aside	3-8	42
Appellate Review of Florida Army National Guard Non-Judicial Punishment Proceedings	3-9	43
Supplementary Action	3-10	44
Records Disposition for Florida Army National Guard Non-Judicial Punishment Proceedings	3-11	45
Administration for Punitive Reductions	3-12	45

<u>TITLE</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
--------------	------------------	-------------

**PART II – Air National Guard Procedures**

Purpose	3-13	55
Non-Punitive Measures	3-14	55
Personal Exercise of Discretion	3-15	56
Maximum Punishments	3-16	57
Florida Air National Guard Non-Judicial Punishment Procedures	3-17	58
Florida Air National Guard Supplementary Actions	3-18	63
Appellate Review for Florida Air National Guard Non-Judicial Punishment Proceedings	3-19	65
Records Disposition	3-20	66

CHAPTER 4

COURT-MARTIAL PRETRIAL PROCEDURES AND OTHER  
GENERAL MATTERS

Preparation of Formal Charges	4-1	73
Completion of DD Form 458	4-2	75
Who May Convene a Court-Martial	4-3	79
Convening a Court-Martial	4-4	80
Discovery	4-5	80
Securing the Presence of the Accused at a Court-Martial	4-6	81
Trial of an Accused Not Present for the Proceedings	4-7	82
Securing the Presence of Witnesses at Court-Martial	4-8	82
Fees and Costs	4-9	82
Speedy Trial Rule	4-10	83
Arraignment and Pleas	4-11	83
Conduct of Trial	4-12	84
Contempt of Court Proceedings	4-13	84
Post Trial Matters	4-14	85
Appellate Review	4-15	85

CHAPTER 5

SUMMARY COURTS-MARTIAL

General	5-1	97
Maximum Punishments	5-2	97
Pre-Trial Matters	5-3	97

<u>TITLE</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
Conduct of Trial	5-4	100
Record of Trial	5-5	101
Post-Trial Matters	5-6	101

CHAPTER 6  
SPECIAL COURTS-MARTIAL

General	6-1	107
Maximum Punishments	6-2	107
Pre-Trial Matters	6-3	107
Composition	6-4	109
Arraignment	6-5	109
Conduct of Trial	6-6	109
Findings and Sentencing	6-7	109
Notice Concerning Post-Trial and Appellate Rights	6-8	111
Adjournment	6-9	111
Post-Trial Matters	6-10	111

CHAPTER 7  
GENERAL COURTS-MARTIAL

General	7-1	115
Maximum Punishments	7-2	115
Article 32, Florida Code of Military Justice, Investigations	7-3	115
Pre-Trial Matters	7-4	116
Composition	7-5	117
Arraignment	7-6	117
Conduct of Trial	7-7	117
Findings and Sentencing	7-8	117
Notice Concerning Post-Trial and Appellate Rights	7-9	119
Adjournment	7-10	120
Post-Trial Matters	7-11	120

CHAPTER 8  
POST-TRIAL PROCEDURE

Report of Result of Trial; Deferment of Confinement, Forfeitures and Reduction in Grade	8-1	123
--	-----	-----

<u>TITLE</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
Post-Trial Sessions	8-2	123
Preparation of Record of Trial	8-3	125
Records of Trial; Authentication; Service; Loss; Correction; Forwarding	8-4	128
Matters Submitted by the Accused	8-5	130
Recommendation of the Staff Judge Advocate	8-6	131
Action by the Convening Authority	8-7	133
Clemency Actions	8-8	136
Disposition of the Record of Trial After Action	8-9	138
Execution of Sentences	8-10	138
Promulgating Orders	8-11	140

CHAPTER 9  
APPELLATE PROCEDURE

Courts-Martial Appeals	9-1	143
Rules of Appellate Procedure	9-2	143
Appointment of Appellate Counsel	9-3	143
Notice of Appeal	9-4	143
Record on Appeal	9-5	143
Briefs	9-6	144
Oral Argument	9-7	144
Appeals by the Government	9-8	144
Additional Appeals	9-9	145

CHAPTER 10  
AUTHENTICATION 149

APPENDIX A  
AUTHORITY AND REFERENCES

APPENDIX B  
SELECTED PUNITIVE ARTICLES OF THE FLORIDA  
CODE OF MILITARY JUSTICE (As Adopted from the  
Uniform Code of Military Justice)

TITLE

APPENDIX C  
GUIDE FOR FLORIDA CODE OF MILITARY JUSTICE SUMMARY COURTS-MARTIAL

APPENDIX D  
FLORIDA ARMY NATIONAL GUARD GUIDE FOR ADMINISTRATION OF NON-  
JUDICIAL PUNISHMENT UNDER ARTICLE 15, FLORIDA CODE OF MILITARY  
JUSTICE

APPENDIX E  
ABBREVIATIONS AND ACRONYMS

APPENDIX F  
FLORIDA NATIONAL GUARD REPRODUCIBLE FORMS

APPENDIX G  
SELECTED PORTIONS OF CHAPTER 250, FLORIDA STATUTES, RELATED TO THE  
FLORIDA CODE OF MILITARY JUSTICE

APPENDIX H  
SELECTED PORTIONS OF THE MILITARY RULES OF EVIDENCE

APPENDIX I  
FIGURES

CHAPTER 1  
GENERAL INFORMATION

1-1. Purpose.

a. One of the most important goals of the Military Justice System (MJS) is rehabilitation. Counseling, training, and command leadership are essential if an offending member is to become a useful and productive member of the Florida National Guard (FLNG).

b. The purpose and nature of military law is to promote justice, to assist in maintaining good order and discipline, to promote efficiency and effectiveness, and to thereby strengthen the security of the State of Florida and of the Nation.

c. This regulation shall provide commanders with disciplinary options and procedures for situations involving violations of the punitive articles of the Florida Code of Military Justice (FCMJ) by members of their unit. These procedures should normally be used prior to initiating action under National Guard Regulation (NGR) 600-200, NGR 600-5, NGR 635-101, Army Regulation (AR) 135-175, or AR 135-178.

1-2. Jurisdiction.

a. The sources of military jurisdiction include the constitution of the United States and Chapter 250, Florida Statutes (Fla. Stat.).

b. Members of the FLNG are subject to the FCMJ at all times during their enlistment or appointment, unless serving on Federal active duty under Title 10, United States Code (USC). Prior to the referral of charges for offenses occurring during a non-duty status and having no military nexus, commanders shall obtain a legal review and written guidance from the Staff Judge Advocate (SJA) of their major command (MACOM/MAJCOM) or the State SJA.

c. Members of the FLNG are subject to the FCMJ whether serving within or outside the State of Florida. An offense committed outside the state may be punished outside or within the state.

d. A court-martial may be convened and held in a unit of the FLNG serving outside the state. The court has the same jurisdiction and powers as if the court-martial were held within the state.

e. The FCMJ and this regulation do not apply to Servicemembers in a Federal active duty status (Title 10, USC).

### 1-3. Definition of Terms.

a. Convening Authority: A commissioned officer in command and his successors in command as defined in Section 250.35, Fla. Stat., and as further defined herein.

b. Final Action: The last action taken on a judicial or non-judicial proceeding, to include any appeal action, change in punishment (clemency action), and vacation of a suspended sentence (serving a previously suspended sentence after the suspension is vacated).

c. Florida Code of Military Justice: Section 250.35, Fla. Stat., adopts the punitive articles of the Uniform Code of Military Justice (UCMJ), and adopts, in part, the 2002 edition of the Manual for Courts-Martial (MCM). The adoption of the UCMJ and the MCM are modified and limited with regard to punishments and procedures as provided herein as well as in Sections 250.35 – 250.39, Fla. Stat.

d. Military Judge: The presiding officer of a General Court-Martial (GCM) or Special Court-Martial (SPCM).

e. Offense: A violation of the punitive articles under the FCMJ. See Appendix B of this Regulation.

f. Performance Fiche: The State Official Military Personnel File (OMPF) is considered "Performance Fiche" for the purposes of this Regulation.

g. Restricted Fiche: The Field Department of the Army (DA) 201 File, Military Personnel Records Jacket (MPRJ), or the electronic version, if any, is considered "Restricted Fiche" for the purposes of this Regulation.

h. Unit Personnel Record Group (UPRG): The Florida Air National Guard (FLANG) official military personnel file.

### 1-4. Responsibilities.

a. State Staff Judge Advocate. The State Staff Judge Advocate (SSJA), as the principle legal advisor to The Adjutant General of Florida (TAG-FL), is responsible for the overall supervision and administration of military justice within the FLNG. The SSJA, or his assistant, shall make frequent inspections in the field in supervision of the administration of military justice. [FCMJ Article 6.] The SSJA may publish directives or rules not inconsistent herewith for the conduct of military justice operations.

b. The SJA or Command Judge Advocate (CJA) of a MACOM/MAJCOM is responsible for providing legal advice and services to their respective commands. The SJA or CJA has responsibilities generally corresponding to those discharged by the

SSJA with relation to TAG-FL. He will assist the commander by identifying legal problems and participating in making legally acceptable decisions.

c. Judge Advocates. Judge Advocate (JA) officers perform those duties under commanders of their respective assigned or attached commands or under other supervisory JA's.

d. Trial Defense Service. The Office of the Staff Judge Advocate (OSJA), Joint Forces Headquarters-Florida (JFHQ-FL), will detail FLNG JAs to serve as defense counsel for Servicemembers who are entitled to representation in an adverse administrative or military justice action. Additionally, when the need exists, the JFHQ-FL may maintain at least one JA whose primary assigned duty is the representation of Servicemembers accused of violations of the FCMJ or in other adverse actions wherein the Servicemember is entitled to the assistance of a military attorney.

e. Other assigned JA personnel. Other assigned personnel of the JA office will perform those duties prescribed by their superiors and/or outlined in applicable regulations as supplemented by superior competent authority.

f. Commanders. Commanders at each level are responsible for carrying out the military justice responsibilities outlined in this Regulation and other references. A copy of this Regulation is issued to each unit down to the company/squadron level to be maintained in the unit's publications library, and is subject to inspection. It is imperative that commanders familiarize themselves with the contents of these materials.

g. Convening authorities. Convening Authorities are responsible for carrying out those duties outlined in this Regulation and other references. Careful attention will be given to the area of Unlawful Command Influence discussed in paragraph 1-7, below.

#### 1-5. Basic principles of military justice.

a. Role of the commander. The commander has the primary role in the administration of military justice. He is responsible for both enforcing the law and protecting the rights of the individual Servicemember. Generally, the commander is one of the first to learn of conduct of a Servicemember under his command that might require non-punitive disciplinary measures, non-judicial punishment or court-martial action. The commander's duties are two-fold. First, he has a duty to investigate the circumstances of a possible infraction and secondly, to determine the appropriate action. Factors such as the seriousness of the offense, the intent or lack thereof, the age, experience and any special qualifications of the offender, the past performance and record of the Servicemember, and the state of morale and discipline in his unit will influence whether the commander prefers charges by a court-martial or disposes of the matter with non-punitive disciplinary action or non-judicial punishment. The commander has strong powers to exact obedience. But their use should be restrained and

graduated to "fit the crime." The commander should act objectively and calmly, and should never resort to scorn or ridicule. He should get all the facts before acting.

(1) The importance of discipline. A principal and continual responsibility of the commander is intelligent, willing, and cheerful achievement of assigned missions and/or compliance with orders. The following components are essential to the achievement of real discipline:

(A) Orders must be militarily correct and capable of execution by subordinates.

(B) Close observation is essential to ensure that orders are meticulously complied with by each individual.

The commander is responsible for detecting transgressions, determining their causes, and applying sound corrective action in the form of the least severe sanction that, in his judgment, will effectively deal with the situation.

(2) Leadership and use of discretion. The commander has a wide variety of options available to him, and each option has its particular attributes and values. The commander should consider some action for every person who engages in misconduct, beginning with the least severe action believed adequate to accomplish the necessary goals. The commander's choice of action will depend in part on the nature of the misconduct; it will also depend upon the goal sought. For example, punishment is generally considered to have one or more of these goals:

(A) To protect society against a repetition of the offense;

(B) To reform the offender so he will not repeat the offense; and

(C) To deter others from considering and committing such an offense.

b. Individual rights.

(1) Presumption of innocence. Every person accused of committing an offense is presumed innocent until it is established, beyond a reasonable doubt, that the accused is guilty. A fair and just decision can only be made after all the evidence of the accused's guilt or innocence has been considered.

(2) Search and seizure. Our Constitution protects every citizen from unreasonable search and seizure. However, this right to privacy is not an absolute right. Our courts have balanced the rights of the individual against the needs of society and have established rules for determining when a search is reasonable (see paragraph 2-7, below).

(3) Other Constitutional rights. Our laws provide that no one can be required to incriminate himself and that anyone suspected of having committed a crime has the absolute right to consult with a lawyer (see paragraph 1-6, below).

(4) Prompt action on offenses. A Servicemember accused of a crime has the right to be advised of the charges against him at the earliest possible opportunity so that he can prepare his defense and so that his guilt or innocence may be determined without unreasonable delay. Once the accused is notified, the commander has 120 days to bring the Servicemember to trial (see paragraph 4-10, below).

(5) The adversarial system. At a court-martial it is the responsibility of trial counsel to represent the government and defense counsel to represent the accused. Each counsel is duty bound to do all that they can, within the law and the Rules of Professional Responsibility, to represent the interests of their client. The goal of the court-martial system is to achieve justice. As in all American criminal courts, courts-martial are adversarial proceedings. That is, the government and the accused each present the facts, law, and arguments on behalf of their side. In doing this, each side must follow the applicable procedural and evidentiary rules. Only a court-martial or Non-Judicial Punishment (NJP) proceeding can determine the ultimate question of innocence or guilt.

c. Types of disciplinary measures authorized.

- (1) Non-punitive measures;
- (2) Non-Judicial Punishment;
- (3) Summary Court-Martial;
- (4) Special Court-Martial; SPCM authorized to adjudge a Bad Conduct Discharge (BCD); and
- (5) General Court-Martial.

d. Factors Influencing Disposition.

(1) Nature of the offense. A minor offense does not merit severe punishment and should be handled by the commander under the non-punitive or NJP sections of this Regulation. A more serious offense may warrant a court-martial. All facts surrounding the commission of the offense must be considered. Conduct which is also a violation of state or federal criminal law, involves violence or use of weapons, and/or would constitute a felony offense should be referred to civilian authorities for prosecution. In such cases, the commander's SJA will coordinate any such referral.

(2) Personal history of the accused. The accused's performance in the civilian and military communities often indicates his general character and rehabilitation potential. A first time offender generally may be treated more leniently than a repeat offender. A commander who talks to the accused's supervisor and reviews his personnel records is better able to determine what action will most benefit the member and the FLNG.

e. Role of the unit.

(1) Administrative support. The MJS cannot work efficiently without administrative support. Forwarding of charges does not end the unit's involvement in the case. For example, the unit may be required to furnish witnesses, provide transportation and guards, or ensure that the accused appears at trial in a clean, appropriate uniform.

(2) Witnesses. A case cannot be tried successfully without witnesses. The unavailability of a witness for the government or the accused may result in needless delays or dismissal of the case. The unit commander has the duty to ensure that essential witnesses are available for trial for the government's case, as well as the case of the accused. The accused, or his defense counsel, has the duty to inform the commander of the essential witnesses needed for his defense.

1-6. Right to counsel.

a. There is no Constitutional or statutory right to counsel for the accused in NJP or Summary Court-Martial (SCM) proceedings. However, if the accused has retained civilian counsel, that attorney may be permitted to attend either of those proceedings unless the commander or SCM Officer deems it would unnecessarily delay the action.

b. In an NJP or SCM proceeding, the accused's attorney may be permitted to advise the accused. He is not an advocate in such actions and normally will not be allowed to make legal arguments or legal objections.

c. There is, however, the absolute right to counsel in a SPCM or GCM action. Upon request, or order by a military judge, the accused will have military defense counsel appointed by the OSJA, JFHQ-FL. In addition to military counsel, the accused may hire a civilian attorney, at no cost to the government. In those cases where the accused has hired private counsel, the military counsel will continue to assist the accused unless that military counsel is discharged by the accused, in writing.

1-7. Unlawful command influence.

a. The convening authority, the officer empowered to initiate a court-martial, is necessarily one of the principal participants in the court-martial process. While it may be true that many years ago courts-martial were viewed as a commander's personal

instrument for the maintenance of discipline, under both the UCMJ and the FCMJ, the court-martial is now an independent court of law. As the *Powell Committee on the Uniform Code of Military Justice, Good Order and Discipline in the Army* emphasized, the convening authority retains general power over the responsibility for discipline within a command but may not use the court-martial as a personal instrument for achieving discipline:

"Correction and discipline are command responsibilities in the broadest sense, but some types of corrective action are so severe that under time-honored principles they are not entrusted solely to the discretion of a commander. At some point, he must bring into play judicial processes. It is his responsibility to select the cases which he thinks deserve sterner corrective action than he is permitted to impose by himself. When he has done this, it is not intended that he be able to influence judicial decisions . . . . The interests of discipline do not require that he [the commander] have any power to interfere with the independent judgment of persons who are by law responsible for judicial actions."

b. Convening authority's proper role. The FCMJ permits the convening authority to play a dominant role in the court-martial process before and after trial (see Figure 1-1, page 11). Before trial, the convening authority decides whether to convene a court-martial and refers the case to trial. After the trial, the convening authority has broad powers of clemency as well as the final approval on the punishment imposed. But while the convening authority plays a dominant role before and after trial, the FCMJ has provisions to assure the independence of the court-martial during trial. Article 37 of the FCMJ provides that:

"No authority convening a . . . court-martial, nor any other commanding officer, may censure, reprimand or admonish the court or any member, military judge, or counsel thereof, with respect to . . . any . . . exercise of its or his functions . . . . No person subject to this [Code] . . . may attempt to coerce or, by any unauthorized means, influence the action of a court-martial . . . in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts."

c. Specific prohibitions. Superiors may not direct how subordinate commanders act on cases over which authority to act has not been withheld or restricted. A superior who believes a specific action (such as imposing NJP, referring a case to trial, etc.) should be taken may not order the subordinate to take the desired action. Rather, until the accused has been arraigned on a charge, the superior has authority to order that charges be referred to him for disposition; after arraignment, the superior has no authority to take action on the charge.

d. Additional guidance regarding command influence.

(1) The commander may not order a subordinate to dispose of a case in a certain way. Each judicial authority, at every level, is vested with independent discretion, by law, which may not be impinged upon. The classic problem area involves "policy letters" that announce guidelines on appropriate levels of disposition and/or punishment. An accused is entitled to have the immediate commander exercise independent discretion in the disposition of charges. There is no need to dictate dispositions to a lower-level commander.

(2) The commander must not have an inflexible policy on disposition or punishment. As a "judicial authority," the convening authority must consider each case individually on its own merits. If unable to do so, the power to act must be relinquished.

(3) The commander may not dispose of the case if he is the accuser, actually or nominally. As a "judicial authority," the convening authority who possesses more than an official interest cannot fairly determine the disposition of the case. Exceptions to this rule include:

- (A) General regulations;
- (B) Non-Judicial Punishment under Article 15, FCMJ;
- (C) Summary Courts-Martial.

(4) The commander may neither select nor remove SPCM or GCM court members in order to obtain a particular result in a particular trial. The convening authority must use only those legitimate criteria found in Article 25, FCMJ, in choosing and/or replacing court members:

- Age
- Education
- Training
- Experience
- Length of service
- Judicial temperament

(5) No outside pressures may be placed on the military judge, defense counsel, or court members to arrive at a particular decision. The military judge's role is as sensitive and vital as that of the court members. And the defense counsel's zeal for the client's defense is as essential an element of a fair trial as the impartiality of the military judge and court members. (See Article 37, FCMJ; see also Rules for Court-Martial (R.C.M.) 801.)

(6) Witnesses may not be intimidated or discouraged from testifying. It is unlawful for the convening authority to directly or indirectly intimidate, tamper with, or

improperly influence a witness. While the convening authority may not unlawfully influence a witness before trial, the convening authority may have lawful dealings with the witness. In particular, the GMC Convening Authority (GCMCA) may enter into an agreement to grant witness immunity in exchange for the witness' testimony. (See R.C.M. 704.)

(7) The court-martial decides punishment. An accused may not be punished before trial.

(8) No person may invade the independent discretion of the military judge.

(9) The commander may not have an inflexible attitude towards clemency. The convening authority may approve or disapprove findings, and suspend or reduce sentences. As a "judicial appellate authority," the convening authority has a duty to impartially review military justice actions. Commander's policy statements, while appropriate for the purposes of improving discipline and order and preventing crime, should not contain language indicative of inflexibility in the review process.

LEFT BLANK INTENTIONALLY

**Figure 1-1 Commander's Lawful and Unlawful Influences**

**Commander's Lawful and Unlawful Influences in the Military Justice Arena**

**Pretrial Actions**

**Lawful Influence**

Power to gather facts.  
Commander's preliminary inquiry.  
Article 32 pretrial investigation.  
Power to affect a disposition.  
Nonpunitive options.  
Preferral of charges.  
Forward with recommendations.  
Power to select court members.  
Select best qualified personnel.  
Replace panels.  
Referral to court-martial.  
Overrule a subordinate's disposition.

**Unlawful Influence**

Pretrial punishment.  
Ordering a disposition.  
Accusers taking further action.  
Impinging upon a subordinate's exercise of discretion.  
Categorical exclusion of potential court members.

**Trial Actions**

**Lawful Influence**

Provide facility and personnel support.  
Grant immunity to witnesses.

**Unlawful Influence**

Attempting to influence actions of a court-martial in arriving at findings or a sentence.  
Intimidating or discouraging witnesses from testifying.  
Usurping General Court-Martial Convening Authority.

**Post-Trial Actions**

**Lawful Influence**

Take action on the case.  
Seek reconsideration; appeal; rehearing.

**Unlawful influence**

Inflexible attitude regarding clemency.  
Censuring, reprimanding, admonishing, or giving unfavorable efficiency ratings for performance as court personnel.

LEFT BLANK INTENTIONALLY

## CHAPTER 2 INVESTIGATION OF OFFENSES AND PROCEDURES FOR INITIATING DISCIPLINARY ACTION

2-1. Sources of information. A commander may receive information from many sources that an offense may have been committed by one of his Servicemembers. For example, the unit commander may witness an offense, someone within the unit may report the offense, or a higher headquarters may forward a report for action. When a superior commander asks that a report be investigated and the disposition reported, the request should not be construed or interpreted as a directive to take disciplinary action.

2-2. Command responsibilities.

a. Regardless of how the commander learns of an alleged offense, he must ensure that the matter is promptly and adequately investigated.

b. Reporting. Any incident which may generate widespread adverse publicity or which may damage public confidence in the organized militia will be reported to TAG-FL through channels.

c. Investigation. The investigation should provide the unit commander with sufficient information to make an intelligent and appropriate disposition of the incident reported. The commander may conduct the inquiry himself or he may direct some other competent individual to do it. In serious cases, consideration should be given to use of law enforcement professionals, such as the Florida Army National Guard (FLARNG) Military Police (MP)/FLANG Security Forces (SF), or Criminal Investigation Division (CID). The investigator should collect and present all information which may prove or disprove the allegation of misconduct. The investigation should address itself to three primary questions:

- 1) *Was the offense committed?*
- 2) *Was the suspected Servicemember involved in the offense?*
- 3) *What is the character and military record of the suspected Servicemember?*

d. Impartiality. The investigator must remain impartial at all times. A one-sided investigation may lead to an injustice to the accused and an embarrassment to the command. Usually, the preliminary investigation is informal and consists of interviews with witnesses and review of police reports. The investigation must be thorough enough to provide a firm factual foundation for a determination of what happened and what should be done. This investigation is preliminary in nature and should not be confused with the formal Article 32, FCMJ, investigation, which requires sworn charges, nor the procedures for an administrative investigation under AR 15-6.

e. Disposition. Once the preliminary investigation is completed, the unit commander must make his decision. The commander may:

- (1) Decide to take no action;
- (2) Decide to take non-punitive disciplinary action (see paragraph 3-2, below);
- (3) Decide to impose NJP under Article 15, FCMJ (see Chapter 3, below);
- (4) Decide to prefer court-martial charges against the accused; or
- (5) Refer the case to the appropriate civilian authorities.

2-3. Questioning suspects and witnesses, generally. It is the duty of the unit commander to ensure prompt investigation of the circumstances of an alleged crime and to examine the facts relevant to the guilt or innocence of the accused. All necessary witnesses, as well as suspects, should be interviewed. Interviews should be conducted fairly and, because memories fade, as soon as possible. The questioning of any suspect must begin with a warning of his rights under Article 31, FCMJ, and his right to counsel. An investigation may be complicated or simple. In either case, the investigator will want to question both the suspect and the witnesses. Not all cases will require formal statements. In the simple case, sufficient facts may be obtained without written statements.

2-4. Article 31, FCMJ, warning/right to a lawyer.

a. General. A confession or admission by a suspect without first warning him of his rights under Article 31, FCMJ, and his right to a lawyer may result in any confession or admission not being admissible against him in a court-martial. It is possible that an accused may still be convicted if there is other sufficient evidence of guilt which is admissible.

b. Procedure. The following procedures must be carefully followed in questioning a suspect to ensure that his statements are admissible in court proceedings:

- (1) Before asking any questions pertaining to the case, first inform the individual:

*"You are suspected of committing the following offense(s) which is (are) violation(s) of the Florida Code of Military Justice. Before I ask you any questions, you must understand your rights. You have the right to remain silent. Any statement you choose to make may be used as evidence against you in criminal or administrative proceedings. You have the right to consult with a lawyer before being asked any questions and to have the lawyer present with*

*you during questioning. You may hire a civilian lawyer at no cost to the government or a military lawyer will be detailed for you at no cost to you. Even if you decide to answer questions now without having a lawyer present, you may stop answering questions until you consult with a lawyer."*

(2) After this statement is made, the suspect should be asked if he understands his rights. When the investigator is satisfied that the suspect understands these rights, then the following two questions should be asked:

(A) *"Do you want a lawyer?"* and

(B) *"Do you want to answer any questions or make a statement?"*

(3) The suspect may indicate that he wishes to waive his rights to remain silent and to consult with a lawyer. The suspect must waive these rights freely, knowingly and intelligently. If he does so, he may then be questioned concerning the offense. If the suspect indicates that he wants to consult with a lawyer, he should not be questioned until a lawyer is present.

(A) If the suspect indicates that he does not wish to answer questions, he should not be questioned.

(B) It is advisable to have a disinterested witness present for such advice of rights and suspect statements.

(C) The investigator may decide not to question a suspect if other evidence is available.

(4) If the person being interviewed is not suspected of having committed an offense, but is merely a witness to the offense or has knowledge of it, there is no legal requirement to warn him of his rights.

(A) In the questioning, the investigator may begin to suspect that the witness was involved in the offense. This may happen when it appears that the witness was actually an accomplice or an accessory to the crime.

(B) In such event, the investigator should immediately stop the questioning, inform the witness of the offense of which he is now suspected, and advise him of his rights as indicated above.

## 2-5. Written statements.

a. Procedure. The best means for making an accurate and complete record of the information obtained in the investigation is the sworn statement. A sworn statement (affidavit) is a written statement of facts given by a witness or suspect who states under

oath or affirmation that the contents of his statement are true. All persons who are detailed to conduct the investigation are authorized by Article 136, FCMJ, to administer oaths in conjunction with sworn statements taken in the course of a preliminary investigation. No special form is required to make this sworn statement.

(1) If the statement is to be taken from a suspect, DA Form 3881 (Rights Warning Procedure/Waiver Certificate), (Figure 2-1, Page 25), should be completed and signed by the suspect before taking his statement.

(2) After a suspect has signed the DA 3881 and waived his right to remain silent, his statement may be taken on DA Form 2823 (Sworn Statement), (Figure 2-2, Page 27). FLANG Servicemembers will use Air Force (AF) 1168 (Statement of Suspect/Witness/Complainant) (Figure 2-3, Page 29).

(A) The DA 2823 may also be used for the sworn statement of a witness. Since the witness is not a suspect, this latter form has no provision for a warning of his rights.

(B) The language of the witness or suspect should be used throughout the statement even though it may be vulgar, grammatically incorrect, or illogical. This ensures that the writing is the witness's statement and not the composition of the investigating officer. The statement may be written in narrative or story form, in question and answer form, or both.

(C) An appropriate oath for completing the sworn statement may be administered as follows:

*"Do you swear (or affirm) that the statements you have made are the truth, the whole truth and nothing but the truth (so help you God)?"*

(3) The officer administering the oath must sign his own name on the form.

b. Guidelines for written statements.

(A) Sworn statements should be requested primarily from persons who have direct, personal knowledge of the facts. Opinions and conclusions, without offering supporting facts, reduce the reliability of a sworn statement. The investigator should attempt to obtain the facts upon which the opinions are based, and encourage the witness to substitute facts for his opinions.

(B) The witness should initial the written statement at the beginning and the end of each page, at each erasure and correction, and where otherwise indicated on the DA 2823 or AF 1168. The purpose of initials is to avoid any questions of tampering after the statement has been completed.

2-6. Oral statements. When a suspect waives his rights under Article 31, FCMJ, and his right to counsel, but refuses to sign a statement, the investigator may make a summary of his remarks. This summary or oral statement may be admissible in a trial by courts-martial. The oral statement of a suspect concerning his part in an offense which is made to a person who is not investigating the case or which he has blurted out spontaneously to the investigator before the rights warning could be administered may also be admissible in a trial by courts-martial. If possible, have critical oral statements witnessed by at least one disinterested individual besides the investigator.

2-7. Search and seizure.

a. There are five ways in which a unit commander may lawfully seize the property of a member of the unit. An unlawful search may violate the member's rights and may result in seized items being inadmissible.

(1) Lawful search and seizure. A commander may authorize a search if he is reasonably certain that an offense has been committed and that items connected with the offense will be found in the location the commander intends to search.

(2) Inspections. Search and seizure requirements do not limit the commander's authority to conduct legitimate inspections including unannounced shakedown inspections. The purpose of an inspection is to promote the health, welfare, and safety of the personnel in the unit. For example, the commander may want to ensure that the members of the unit have their equipment cleaned, maintained, and properly stored, and that they have no dangerous articles, such as ammunition, carried in from the range. The inspection must apply uniformly to all members in the area and may extend to an examination of all their belongings kept within their living area. Although an inspection need not be previously announced, it must have a legitimate purpose and may not be merely subterfuge for what is really an unlawful search. The commander who decides to conduct an "inspection" upon hearing of a barracks larceny, and then starts the inspection near the living area of the prime suspect, will not convince anyone that he was "inspecting" rather than "searching". Since an inspection is not based on the commander's belief that a crime has been committed, it is not a search. Evidence of criminal conduct discovered during the course of a legitimate inspection may be admitted at a trial by court-martial.

(3) Inventories. When a member is Absent Without Leave (AWOL) or is about to be confined or detained by civilian authorities, an inventory of the member's personal belongings is required in accordance with AR 735-5. Evidence obtained as a result of this inventory is normally admissible in a court-martial.

(4) Vehicle searches. Generally speaking, automobiles that are brought onto a military installation are subject to search. If the automobile is in the unit area, the unit commander can authorize a search. If it is located on the post, the post commander

can authorize a search. This applies to Camp Blanding Joint Training Center (CBJTC) and all FLNG armories. Commanders should also be aware of FLNG policies on this matter that may be established from time to time.

(5) Canine searches. If a commander has a reasonable belief that illegal drugs are present in the company area, that commander may authorize a canine search of either the barracks or Privately Owned Vehicles (POVs) located in the company area.

b. General.

(1) Searches not requiring probable cause:

(A) Searches of government property. Government property may be searched under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy of government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use; but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search. When in doubt, a JA should be consulted before conducting a non-consensual search.

(B) Consent searches. Searches may be conducted of any person or property with lawful consent (FNG 609 (Justification/Consent for Search), Figure 2-4, Page 31).

(i) Who may consent. A person may consent to a search of his person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(ii) Scope of consent. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(iii) Voluntariness. To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(iv) Burden of proof. Consent must be shown by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the burden of proof.

(v) No consent is needed to search an entire barracks if the commander has probable cause. However, it is advisable for the commander to have a witness present when a member consents to a search. Should the consent become an issue at trial, the witness can verify the nature of the consent. If a consent search uncovers evidence of criminal conduct, the evidence is admissible at a trial. In the case of consent searches, it does not matter that there was not probable cause to support a search.

(C) Searches incident to a lawful stop.

(i) Stops. A person authorized to apprehend under Florida law and others performing law enforcement or force protection duties may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him to reasonably conclude, in light of his experience, that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

(ii) Frisks. When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. Contraband or evidence located in the process of a lawful frisk may be seized.

(D) Emergency searches to save life or for related purposes. In emergency circumstances to save life or for a related purpose, a search may be conducted of persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(2) Probable cause searches.

(A) Authorization to search. An "authorization to search" is an expressed permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(B) Scope of authorization. A search authorization may be issued for a search of:

(i) Persons. The person of anyone subject to military law, wherever found;

(ii) Military property. Military property of the United States or the State of Florida, wherever located;

(iii) Persons and property within military control. Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located.

(C) Power to authorize. Authorization to search pursuant to this rule may be granted by an impartial individual in the following categories:

(i) Commander. As defined by this publication; or

(ii) Military judge.

(D) Power to search. Any commissioned officer, warrant officer, noncommissioned officer, and any criminal investigator, MP/SF, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted by a commander or military judge.

(E) Probable cause requirement. A search authorization issued under this rule must be based upon probable cause.

(F) Probable cause determination. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule shall be based upon any or all of the following:

(i) Written statements communicated to the authorizing officer;

(ii) Oral statements communicated to the authorizing officer in person, via telephone, or by other appropriate means of communication; or

(iii) Such information as may be known by the authorizing officer that would not preclude the officer from acting in an impartial fashion.

(3) Exigencies. A search authorization is not required for a search based on probable cause when there is:

(A) Insufficient time. There is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(B) Lack of communications. There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with a person empowered to grant a search warrant or authorization and there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(C) Search of operable vehicle. An operable vehicle is to be searched, except in the circumstances where a search warrant or authorization is required by the Constitution of the United States, this Regulation, or these rules. For purpose of this rule, a vehicle is "operable" unless a reasonable person would have known at the time of search that the vehicle was not functional for purposes of transportation; or

(D) Not required by the Constitution. A search authorization is not otherwise required by the Constitution of the United States as it applies to members of the armed forces.

(4) Execution of a search authorization.

(A) Notice. If the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should, when possible, notify him of the act of authorization and the general substance of the authorization. Such notice may be made prior to or contemporaneously with the search.

(B) Inventory. An inventory of the property seized shall be made at the time of a seizure under this rule or as soon as practicable thereafter. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken.

(5) Seizures.

(A) Seizure of property. Probable cause to seize property or evidence exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

(B) Seizure of property or evidence.

(i) Abandoned property. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(ii) Consent. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Military Rules of Evidence (Mil. R. Evid.) 314.

(iii) Government property. Government property may be seized without probable cause and without a search authorization by any person listed in paragraph 2-7b(5)(D), below, unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided in Mil. R. Evid. 314(d), at the time of the seizure.

(C) Seizure of other property. Property or evidence not included in paragraph 2-7b(5)(B)(i), (ii), and (iii), above, may be seized for use in evidence by any person listed in paragraph 2-7b(5)(D), below, if:

(i) The person is authorized to seize the property or evidence by a search authorization;

(ii) Exigent circumstances exist at the time of seizure, as defined in paragraph 2-7b(3), above.

(iii) The person, while in the course of otherwise lawful activity, observes, in plain view, in a reasonable fashion, property or evidence that the person has probable cause to seize.

(D) Power to seize. Any commissioned officer, warrant officer, noncommissioned officer, criminal investigator, MP/SF, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

c. Delegation of authority. A unit commander may not delegate his authority to search.

d. For additional guidance, see Mil. R. Evid. 311 – 316, contained in Appendix I of this Regulation.

## 2-8. Florida National Guard MP/SF.

### a. Power to arrest or detain.

(1) The arrest/detention authority for an FLNG law enforcement officer comes from Section 901.15(11), Fla. Stat.

(2) An FLNG MP/SF is authorized to detain any person when there is probable cause to believe that a felony has been committed on state military property or when a felony or misdemeanor is committed in the presence of an MP/SF.

(3) All FLNG MP/SF personnel shall promptly surrender all persons arrested to the sheriff of the county wherein the state military property is located.

b. Search and Seizure. Military Police are authorized to search all civilian and military vehicles entering and leaving state military property in accordance with applicable command policies and guidance. Military Police are authorized to search any person incident to a lawful arrest made under Section 901.15(11)(a), Fla. Stat.

## 2-9. Handling and safeguarding evidence.

a. Drugs, weapons, clothing, or other items related to an alleged offense are physical evidence of crimes. The unit commander must preserve and safeguard any physical evidence in his custody. Physical evidence should be handled by as few persons as possible since anyone who touches it may be required to appear at the trial. In order to properly safeguard physical evidence, it must be carefully marked to ensure later identification. Safeguarding evidence means locking it in a safe, a locking drawer, or other means which restricts access to it. A chain of custody document, such as a DA Form 2062 (Hand Receipt/Annex Number), or AF 1890, must be initiated. Physical evidence should be turned over to professional investigators as soon as possible.

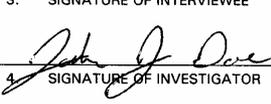
b. Chain of custody. When an item of physical evidence is introduced at trial, counsel must show that it is the same item that was found at the scene of a crime, or otherwise connected with the offense, and that the item has not been altered. The chain of custody document is a written record listing all personnel who have handled an item from the time it was originally identified as evidence until the time of trial.

c. Marking. Physical evidence must be marked immediately by the first person who assumes custody to ensure that it will be identifiable at trial. This mark should be placed on the item itself and is usually the person's initials, the date, and time it was placed into custody. The chain of custody record should briefly describe the item and the date and place of its discovery. If the evidence cannot be marked, it should be placed in a sealed container and the container suitably marked.

d. Perishable and unstable items. Perishable and unstable items of evidence require special attention. They must be photographed or otherwise preserved. Professional assistance is necessary, for example, to preserve a fingerprint or a tire track in the dirt. Military Police/Security Forces and/or local law enforcement officials may be of assistance in this regard. Contact your JA if in doubt.

LEFT BLANK INTENTIONALLY

Figure 2-1 – DA 3881 – Rights Warning Procedure/Waiver Certificate (FRONT)(Army)

<b>RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE</b>			
For use of this form, see AR 190-30; the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
<b>AUTHORITY:</b>		Title 10, United States Code, Section 3012(g)	
<b>PRINCIPAL PURPOSE:</b>		To provide commanders and law enforcement officials with means by which information may be accurately identified.	
<b>ROUTINE USES:</b>		Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.	
<b>DISCLOSURE:</b>		Disclosure of your Social Security Number is voluntary.	
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
Orlando National Guard Armory	21 Feb 06	0830	
5. NAME <i>(Last, First, MI)</i>	8. ORGANIZATION OR ADDRESS		
Doe, John J.	Company C		
6. SSN	7. GRADE/STATUS	1st Battalion, 124th Infantry	
987-65-4321	SPC	Orlando, FL	
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
<b>Section A. Rights</b>			
<p>The investigator whose name appears below told me that he/she is with the United States Army <u>Hqs, 53rd Inf Bde, Florida Army National Guard</u> and wanted to question me about the following offense(s) of which I am suspected/accused: <u>Article 92, FCMJ</u></p> <p>Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:</p> <ol style="list-style-type: none"> <li>1. I do not have to answer any question or say anything.</li> <li>2. Anything I say or do can be used as evidence against me in a criminal trial.</li> <li>3. <i>(For personnel subject to the UCMJ)</i> I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.</li> </ol> <p style="text-align: center;">- or -</p> <p><i>(For civilians not subject to the UCMJ)</i> I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.</p> <ol style="list-style-type: none"> <li>4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.</li> </ol>			
5. COMMENTS <i>(Continue on reverse side)</i>			
<b>Section B. Waiver</b>			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES <i>(If available)</i>		3. SIGNATURE OF INTERVIEWEE	
1a. NAME <i>(Type or Print)</i>	SPC Jane C. Smith		
b. ORGANIZATION OR ADDRESS AND PHONE	Co C, 1/124th Inf		
		4. SIGNATURE OF INVESTIGATOR	
2a. NAME <i>(Type or Print)</i>			
b. ORGANIZATION OR ADDRESS AND PHONE			
		5. TYPED NAME OF INVESTIGATOR	
		MAJ David C. James	
		6. ORGANIZATION OF INVESTIGATOR	
		Hqs, 53rd Inf Bde	
<b>Section C. Non-waiver</b>			
1. I do not want to give up my rights <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT <i>(DA FORM 2823)</i> SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

DA 3881 – Rights Warning Procedure/Waiver Certificate (BACK)(Army)

PART II - RIGHTS WARNING PROCEDURE	
THE WARNING	
<p>1. WARNING - Inform the suspect/accused of:</p> <ul style="list-style-type: none"> <li>a. Your official position.</li> <li>b. Nature of offense(s).</li> <li>c. The fact that he/she is a suspect/accused.</li> </ul> <p>2. RIGHTS - Advise the suspect/accused of his/her rights as follows:                  "Before I ask you any questions, you must understand your rights."                  a. "You do not have to answer my questions or say anything."                  b. "Anything you say or do can be used as evidence against you in a criminal trial."                  c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer</p>	<p>can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."                  - or -                  (For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."                  d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."                  Make certain the suspect/accused fully understands his/her rights.</p>
THE WAIVER	
<p>"Do you understand your rights?"                  (If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)</p> <p>"Have you ever requested a lawyer after being read your rights?" (If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)</p>	<p>"Do you want a lawyer at this time?"                  (If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)</p> <p>"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)</p>
SPECIAL INSTRUCTIONS	
<p>WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.</p> <p>IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.</p> <p>PRIOR INCRIMINATING STATEMENTS:</p> <ul style="list-style-type: none"> <li>1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.</li> </ul>	<p>2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.</p> <p>NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.</p> <p>WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")</p>
<p>COMMENTS (Continued)</p>	

Figure 2-2 – DA 2823 – Sworn Statement (FRONT)(Army)

<b>SWORN STATEMENT</b>			
For use of this form, see AR 190-45; the proponent agency is PMG.			
<b>PRIVACY ACT STATEMENT</b>			
<b>AUTHORITY:</b>	Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).		
<b>PRINCIPAL PURPOSE:</b>	To provide commanders and law enforcement officials with means by which information may be accurately identified.		
<b>ROUTINE USES:</b>	Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.		
<b>DISCLOSURE:</b>	Disclosure of your social security number is voluntary.		
	<b>2. DATE (YYYYMMDD)</b>	<b>3. TIME</b>	
Orlando National Guard Armory	2006FE06	0830	
<b>5. LAST NAME, FIRST NAME, MIDDLE NAME</b>			<b>7. GRADE/STATUS</b>
Doe, John J.			SPC
<b>8. ORGANIZATION OR ADDRESS</b>			
Co C, 1st Bn, 124th Inf, P.O. Box 3467, Orlando, Florida 34253-4856			
<b>9.</b>			
I, John J. Doe, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
This DA Form 2823 is an example of a properly prepared Sworn Statement. Note that all corrections MUST be initialed by the person making the statement.			
X			
NOTHING FOLLOWS			
<b>10. EXHIBIT</b>	<b>11. INITIALS OF PERSON MAKING STATEMENT</b>		<b>PAGE 1 OF 2 PAGES</b>
	DJJ		
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"			
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.			

DA 2823 – Sworn Statement (BACK) (Army)

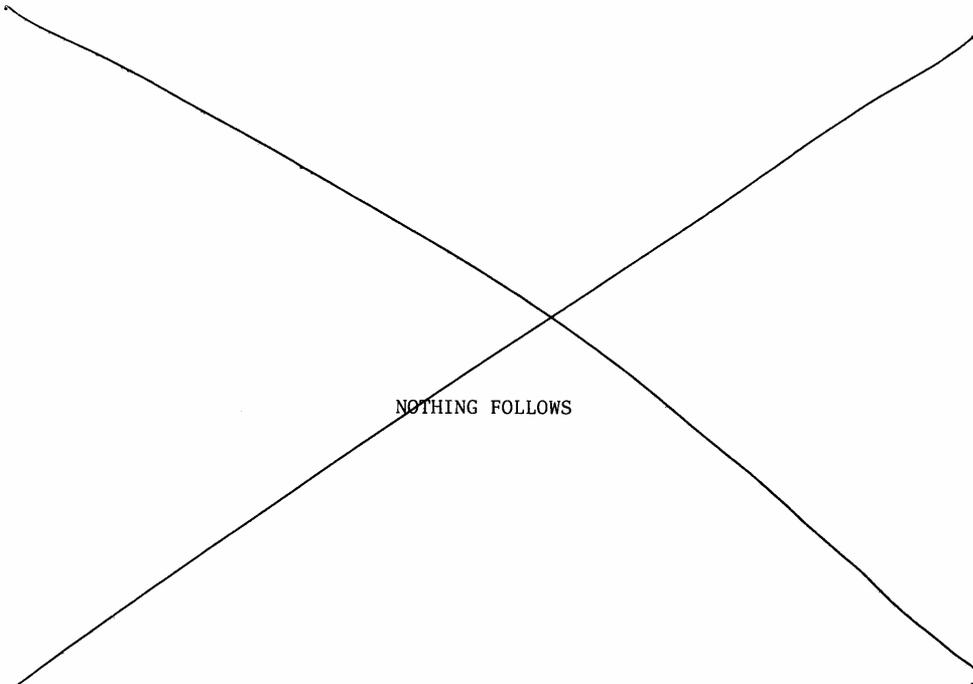
STATEMENT OF	SPC John J. Doe	TAKEN AT	Orlando, FL	DATED	6 Feb 06
9. STATEMENT (Continued)					
 <p style="text-align: center;">NOTHING FOLLOWS</p>					
<b>AFFIDAVIT</b>					
I, John J. Doe, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.					
WITNESSES: SPC Jane C. Smith			 <i>(Signature of Person Making Statement)</i>		
ORGANIZATION OR ADDRESS Co C, 1st Bn, 124th Inf			Subscribed and sworn to before me, a person authorized by law to administer oaths, this 6th day of February, 2006 at Orlando, FL		
ORGANIZATION OR ADDRESS			 <i>(Signature of Person Administering Oath)</i>		
ORGANIZATION OR ADDRESS			<i>(Typed Name of Person Administering Oath)</i> David C. James		
ORGANIZATION OR ADDRESS			<i>(Authority To Administer Oaths)</i> MAJ, IN, FLARNG		
INITIALS OF PERSON MAKING STATEMENT				PAGE 2 OF 2 PAGES	

Figure 2-3 – AF 1168 – Statement of Suspect/Witness/Complainant (FRONT)(Air)

STATEMENT OF SUSPECT/WITNESS/COMPLAINANT				SUSPECT
				WITNESS/COMPLAINANT
<b>PRIVACY ACT STATEMENT</b>				
<p><i>AUTHORITY: 10 U.S.C. 8013; 44 U.S.C. 3101; and EO 9397</i>  <i>PRINCIPAL PURPOSES: Used to record information and details of criminal activity which may require investigative action by commanders, supervisors, security police, AFOSI special agents, etc.; and to provide information to appropriate individuals within DoD organizations who ensure proper legal and administrative action is taken.</i>  <i>ROUTINE USES: Information may be disclosed to local, county, state, and federal law enforcement/investigative authorities for investigation and possible criminal prosecution or civil court action. Information extracted from this form may be used in other related criminal and/or civil proceedings.</i>  <i>DISCLOSURE IS VOLUNTARY: SSN is used to positively identify the individual making the statement.</i></p>				
<b>I. STATEMENT INFORMATION</b>				
DATE (YYYYMMDD)	TIME	LOCATION AND INSTALLATION (Bldg/Room No)	UNIT TAKING STATEMENT	REPEAT (If known)
				OFFENSE
				COMPLAINT
<b>II. PERSONAL IDENTIFICATION (Print or Type)</b>				
NAME (Last, First, Middle Initial)		SSN	STATUS/GRADE	
LOCAL ADDRESS (Include Zip Code)		DATE AND PLACE OF BIRTH (If required)	TELEPHONE	
			HOME	DUTY
PERMANENT ADDRESS OR HOME OF RECORD (Include Zip Code)		MILITARY ORGANIZATION/EMPLOYER		DEROS
<b>SPONSOR INFORMATION</b>				
NAME (Last, First, Middle Initial)		GRADE	SSN	ORGANIZATION
				DUTY PHONE
<b>III. ACKNOWLEDGEMENT OF OFFENSES AND 5TH AMENDMENT/ARTICLE 31 RIGHTS ADVISEMENT (Suspect Only)</b>				
<i>I have been advised that I am suspected of the following offenses:</i>				
ADVISED BY (Full Name and Rank)			INDIVIDUAL IDENTIFIED HIMSELF/HERSELF AS A (SF, special agent, etc.)	
SUSPECT INITIALS	<i>and advised me that I have the following rights according to the 5th Amendment of the U.S. Constitution/Article 31 of the Uniform Code of Military Justice.</i>			
	I have the right to remain silent - that is to say nothing at all.			
	Any statement I make, oral or written, may be used as evidence against me in a trial or in other judicial, non-judicial, or administrative proceedings.			
	I have the right to consult with a lawyer.			
	I have the right to have a lawyer present during this interview.			
	I may obtain a civilian lawyer of my own choice at no expense to the government.			
	I may request a lawyer any time during this interview.			
	If I decide to answer questions with or without a lawyer present, I may stop the questioning at any time.			
	MILITARY ONLY: If I want a military lawyer, one will be appointed for me free of charge.			
	CIVILIANS ONLY: If I cannot afford a lawyer and want one, a lawyer will be appointed for me by civilian authorities.			
SUSPECT INITIALS	<i>I have read my rights as listed above and I fully understand my rights. No promises, threats, or inducements of any kind have been made to me. No pressure or coercion has been used against me. I make the following choice. (Initial One)</i>			
	I do not want a lawyer. I am willing to answer questions or make a statement or both, about the offense(s) under investigation.			
	I do not want a lawyer and I do not wish to make a statement or answer any questions.			
	I want a lawyer. I will not make any statement or answer any questions until I talk to a lawyer.			
<i>I fully understand my rights and that my signature does not constitute an admission of guilt.</i>				
SIGNATURE OF SUSPECT			SIGNATURE OF WITNESS/INTERVIEWER	



Figure 2-4 – FNG 609 – Justification/Consent for Search

JUSTIFICATION/CONSENT FOR SEARCH

TO: SPC John J. Doe, 987-65-4321

DATE: 21 Feb 06

SUBJECT: Justification to Search

1. Justification is hereby given for the search of the property of SPC Doe, located at Co C, 2<sup>nd</sup> Battalion, 124<sup>th</sup> Infantry, Orlando National Guard Armory.
2. There is probable cause to justify this search for live M16 ammunition based upon the following information: SGT John Smith observed SPC Doe slip some M16 ammunition into his ammo pouch during rifle qualification at approximately 1100 hours on 14 Feb 06 at the Camp Blanding Joint Training Center. SGT Smith asked the Soldier why he did that, the Soldier replied that it was momentary and he would remove them.
3. This information was presented to me by SGT Smith, Co C, 2/124<sup>th</sup> Inf. I have determined the informant to be reliable based upon his position and the fact that he is a Non-Commissioned Officer.

\_\_\_\_\_  
 Joseph R. Right, CPT  
 Commander  
 Co, C, 2/124th INF Bn

-----  
 SUBJECT: Consent to Search

I, SPC Joseph P. Doe, hereby give my consent for the search of my property located at Co C, 2/124<sup>th</sup> Inf Bn by CPT Joseph R. Right.

\_\_\_\_\_  
 SPC Joseph P. Doe

LEFT BLANK INTENTIONALLY

## CHAPTER 3

NON-JUDICIAL PUNISHMENT PROCEEDINGS (Article 15, Florida Code of Military Justice)

***THE AUTHORITY FOR NON-JUDICIAL PUNISHMENT IS ARTICLE 15 OF THE FCMJ, AS ADOPTED BY STATUTE FROM THE UCMJ. WHILE THE PUNISHMENTS ARE SET BY STATUTE AND APPLY TO ALL BRANCHES OF SERVICE, THE PROCEDURES FOR THE IMPOSITION OF NON-JUDICIAL PUNISHMENT ARE ESTABLISHED BY THE RESPECTIVE SERVICE SECRETARIES.***

***WITH REGARD TO THIS REGULATION, THE PROCEDURES FOR IMPOSING NON-JUDICIAL PUNISHMENT FOR ARMY NATIONAL GUARD PERSONNEL ARE SET FORTH IN PART I, PARAGRAPHS 3-1 THROUGH 3-12 (including Figures 3-1 through 3-5).***

***THE PROCEDURES FOR IMPOSING NON-JUDICIAL PUNISHMENT FOR AIR NATIONAL GUARD PERSONNEL ARE SET FORTH IN PART II, PARAGRAPHS 3-13 THROUGH 3-20 (including Figures 3-6 through 3-8).***

## **PART I - ARMY NATIONAL GUARD PROCEDURES**

### 3-1. Purpose.

a. A commander may impose NJP proceedings for minor offenses committed by military personnel of his command when non-punitive measures fail to remedy a problem, or when the offense is more serious than non-punitive measures would address. Non-Judicial Punishment is a valuable tool in maintaining the discipline and efficiency of a command. In determining whether NJP is appropriate, the commander should consider the age, experience, intelligence, and prior disciplinary and military record of the accused, as well as all facts and circumstances surrounding the commission of the offense.

b. Non-Judicial Punishment may be administered to any member of the FLNG.

(1) Enlisted personnel may receive NJP from their unit commander, or any higher commander in their Chain of Command (COC).

(2) Warrant and company grade officers may receive NJP from any field grade or general officer in their COC.

(3) Field grade officers may receive NJP from any general officer in their COC.

c. Non-judicial punishment cannot be imposed unless the accused is present for the proceedings. Regardless of whether or not prior notice of intent to impose NJP was given, an accused must be physically present to impose any punishment under Article 15, FCMJ.

### 3-2. Non-punitive measures.

a. General. Before NJP is imposed commanders should consider these alternative non-punitive measures. Commanders should impose NJP to correct misconduct in violation of the FCMJ. Such conduct may result from intentional disregard of, or failure to comply with, prescribed standards of military conduct. Non-punitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies.

b. These measures are primarily tools for teaching proper standards of conduct and performance and do not constitute punishment. Included among non-punitive measures are denial of pass or other privileges, counseling, administrative reduction/demotion in grade, administrative reprimands and admonitions, extra training, bar to reenlistment, and Military Occupational Specialty (MOS) reclassification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons. This authority exists apart from any authority to punish misconduct under Article 15, FCMJ. These two separate and distinct kinds of authority should not be confused.

#### c. Reprimands and admonitions.

(1) Commanders have authority to give admonitions or reprimands either as an administrative measure or as NJP.

(2) A written administrative admonition or reprimand will contain a statement that it has been imposed as an administrative measure and not as punishment under Article 15. Admonitions and reprimands imposed as punishment under Article 15, whether administered verbally or in writing (Para 5c(1), Part V, MCM), should state clearly that they were imposed as punishment under that Article.

d. Extra training or instruction. One of the most effective non-punitive measures available to a commander is extra training or instruction. It is used when a Soldier's duty performance has been substandard or deficient; for example, a Soldier who fails to maintain proper attire may be required to attend classes on the wearing of the uniform and stand inspection until the deficiency is corrected. The training or instruction must relate directly to the deficiency observed and must be oriented to correct that particular deficiency.

### 3-3. Personal exercise of discretion.

a. A commander will personally exercise discretion in the NJP process by:

(1) Evaluating the case to determine whether proceedings under Article 15 should be initiated;

(2) Determining whether the accused committed the offense where NJP proceedings are initiated and the accused does not demand trial by court-martial; and

(3) Determining the amount and nature of punishment, if punishment is appropriate.

b. No superior may direct that a subordinate authority impose NJP or issue regulations, orders, or so-called "guides" that either directly or indirectly suggests to subordinate commanders that:

(1) Certain categories of offenders or offenses should be disposed of by NJP; or

(2) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses.

c. A superior commander may send or return a case to a subordinate for appropriate disposition, if necessary, and within the jurisdiction of the subordinate. A superior commander may also reserve personally, or to the superior commander's delegate, the right to exercise Article 15 authority over a particular case or over certain categories of offenders or offenses.

3-4. Maximum punishments. As authorized by Section 250.35, Fla. Stat., a commander who imposes NJP for an offense committed by a unit member may impose the following punishments:

a. Verbal or written reprimand;

b. Extra duty, not to exceed 14 consecutive dates of Active Duty (State Active Duty (SAD), Annual Training (AT), etc.), or 14 consecutive Unit Training Assemblies (UTAs);

c. Restriction to the armory, training site, or other specified limits, with or without suspension from duty, not to exceed 14 consecutive days of Active Duty (SAD, AT, etc.), or 14 consecutive UTAs;

d. Fines not to exceed \$200.00 for any given NJP;

e. Reduction by one grade of a member whom the commander had the authority to promote; or

f. Any combination of the above, except that an imposition of extra duty and restriction must be concurrent and cannot total more than 14 days.

### 3-5. Florida Army National Guard NJP procedures.

a. When imposing NJP, commanders should use the *FLARNG Guide for Administration of Non-Judicial Punishment Under Article 15, FCMJ*, included as Appendix D of this Regulation.

b. When a commander has knowledge that an offense under the FCMJ may have been committed and, after having the incident investigated, further determines that a violation of the FCMJ has occurred, he may initiate NJP proceedings.

c. When a commander requests the next higher level of NJP authority to consider imposing NJP, a referral of NJP proceedings, DA 5109 (Request to Superior to Exercise Article 15, FCMJ, Jurisdiction) (Figure 3-1, Page 47), must be completed.

(1) Any commander below brigade level must refer NJP proceedings to their higher headquarters when the offense involves a Warrant or Commissioned Officer, or E-9 enlisted personnel.

(2) Any commander may refer NJP proceedings to their higher headquarters when:

(A) The offense that is the subject of the NJP proceedings involves senior enlisted personnel (E-5 to E-8); and/or

(B) The nature or seriousness of the offense is such as to be more appropriately disposed of by higher headquarters.

### 3-6. Formal proceedings for FLARNG.

a. Notification and explanation of rights. If an imposing commander determines that NJP proceedings are appropriate, the designated subordinate officer, or the commander personally, will notify the accused of the following:

(1) The imposing commander's intention to initiate proceedings under Article 15, FCMJ.

(2) The maximum punishments imposable under these proceedings.

(3) The right to remain silent.

(4) The offenses that the accused allegedly has committed and the Article(s) of the FCMJ that were violated.

(5) The right to demand trial. The accused will be advised that he has a right to demand a trial by court-martial and that the demand for trial must be made at the start of the hearing prior to any consideration, examination, or presentation of evidence. The accused's decision not to demand trial is irrevocable. The accused will be told that such trial could be by SCM, SPCM, or GCM. The accused will also be told that he may object to trial by SCM and that at SPCM or GCM the accused would be entitled to be represented by qualified military counsel, or by civilian counsel obtained at no expense to the government.

(6) The right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation.

(7) The right to consult with a JA prior to deciding whether to accept NJP and also be provided with a copy of the DA 2627 (Record of Proceedings Under Article 15, FCMJ) (Figure 3-2, Page 48) with contact information for defense counsel. When completing this form, cross out any reference to "~~UCMJ~~" and write "FCMJ" above it.

(A) An accused has the right to examine all statements and evidence upon which the commander intends to rely in arriving at a decision to impose punishment.

(B) An accused does not have the right to examine any information or documents that are privileged or restricted by law, regulation, or instruction.

(8) The right to appeal.

b. Decision period. If the accused wishes to consider the NJP before deciding to accept it, the commander must set a time and date for the accused to reappear for disposition of the proceedings. An accused is authorized 48 hours to consult with counsel, however, commanders shall extend the 48 hour period to contact counsel depending on the availability of the JA assigned defense counsel duties. If the accused chooses to proceed and dispose of the matter immediately, the commander may proceed with the hearing.

c. Hearing procedure. After affording the accused time to consider the offer of NJP action, within the authorized time frame, the accused must make a decision to demand trial by court-martial or accept NJP. When imposing NJP, commanders should use the *Florida Army National Guard Guide for Administration of Nonjudicial Punishment Under Article 15, FCMJ*, included as Appendix D of this Regulation.

(1) If the accused declines NJP, the commander may proceed with preferring charges for court-martial.

(2) If the accused wishes to accept NJP, he has certain options available regarding the hearing.

(A) Ordinarily, hearings are open. However, an accused may request a closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed. An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business, that is, the commander's office. A closed hearing is one in which the commander decides that members of the public will not attend. The fact that an accused requests and is granted a closed hearing does not preclude announcement of punishment as provided in paragraph 3-6c(3)(F) below. The fact that a closed hearing has been granted does not preclude the appearance of witnesses. The commander may grant a request for a closed hearing, yet allow the attendance of certain members of the chain of command or others deemed appropriate to the conduct of the proceedings.

(B) The accused has the right to have someone speak in his behalf; i.e., first-line supervisor, etc.

(C) Matters of defense, mitigation, and/or extenuation are documents and/or testimony used to diminish or discount the offense the accused is being charged with. The accused may or may not have any evidence to present.

(D) Because the proceedings are not adversarial in nature, neither the accused nor spokesperson (including any attorney present on behalf of the accused) may examine or cross-examine witnesses, unless permitted by the imposing commander. The accused or spokesperson may, however, indicate to the commander imposing NJP relevant issues or questions they wish to have explored or asked.

(3) Hearing. Unless the accused demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing. The hearing may consist of the following:

(A) Consideration of evidence, written or verbal, against the accused by the commander.

(B) Examination of all available evidence by the accused.

(C) Presentation by the accused of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.

(D) Determination of guilt or innocence by the imposing commander.

(i) Before finding an accused guilty, the commander must be convinced, beyond a reasonable doubt, that the accused committed the offenses. The commander is not required to make his findings immediately upon completion of receiving the testimony and evidence. The commander can, and probably should, take some time to weigh the evidence and deliberate before making a decision in the matter.

(ii) If the accused is found not guilty, that finding is to be recorded in the blank space between paragraphs 4 and 5 on the DA 2627, and the commander will date and sign the blocks below paragraph 6 on the DA 2627. A copy of the proceedings will be forwarded to the next higher headquarters and a copy will be maintained in the unit files.

(E) Imposition of punishment or termination of the proceedings. If the accused is found guilty, the commander will complete block 4 on the DA 2627 and then will announce the punishment, taking into consideration matters of mitigation and extenuation. The punishment will be recorded in the blank space between paragraphs 4 and 5 on the DA 2627.

(F) If the accused is found guilty, the punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. After deleting the social security number of the accused and other relevant privacy information, the results of the NJP may be posted on the unit bulletin board. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other Soldiers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishments that might result in the appearance of vindictiveness or favoritism. In deciding whether to announce the punishment of an accused in the grade of E-5 or above, the following should be considered:

- (i) The nature of the offense;
- (ii) The individual's military record and duty position;
- (iii) The deterrent effect;
- (iv) The impact on unit morale or mission;
- (v) The impact on the victim; and
- (vi) The impact on the leadership effectiveness of the individual concerned.

(G) Explanation of right to appeal.

(i) The accused will make a decision as to whether or not an appeal is desired by initialing the appropriate block in paragraph 7 on the DA 2627, and by dating and signing the appropriate blocks.

(ii) If the offender elects to appeal, promptly transmit the DA 2627 to the next higher headquarters, together with a written summary of the testimony, findings, punishment imposed, and all physical evidence offered at the hearing. NOTE: Punishment may be executed while appeal is pending.

(iii) If the offender does not appeal, adjourn the hearing and distribute the DA 2627 in accordance with paragraph 3-11, below.

3-7. Florida Army National Guard summarized proceedings.

a. Preliminary inquiry.

(1) A commander, after a preliminary inquiry into an alleged offense by an enlisted Soldier, may use summarized proceedings if it is determined that should punishment be found to be appropriate, it should not exceed:

- (A) Extra duties for 7 days.
- (B) Restriction for 7 days.
- (C) Verbal reprimand or admonition.
- (D) Any combination of the above.

(2) DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, FCMJ) (Figure 3-3, Page 50), will be used to record the proceedings.

b. Notification and explanation of rights. If an imposing commander determines that summarized proceedings are appropriate, the designated subordinate officer or the commander personally, will notify the accused of the following:

(1) The imposing commander's intention to initiate proceedings under Article 15, FCMJ.

(2) The fact that the imposing commander intends to use summarized proceedings and the maximum punishments imposable under these proceedings.

(3) The right to remain silent.

(4) The offense that the accused has allegedly committed and the Article of the FCMJ violated.

(5) The right to demand trial. The accused will be advised that he has a right to demand trial and that the demand for trial must be made at the start of the hearing prior to any consideration, examination, or presentation of evidence. The accused's decision not to demand trial is irrevocable. The accused will be told that such trial could be by SCM, SPCM, or GCM. The accused will also be told that he may object to trial by SCM and that at SPCM or GCM he would be entitled to be represented by a detailed, qualified military counsel, or by civilian counsel, obtained by the accused at no expense to the government.

(6) The right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation.

(7) The right to appeal.

c. Decision period. The accused will be given the opportunity to:

(1) Accept the NJP; and

(2) Request a reasonable time, normally 24 hours, to decide whether to demand trial by court-martial and to gather matters in defense, extenuation, and/or mitigation. Because of the limited nature of the possible punishment, the accused has no right to consult with legally qualified counsel.

d. Hearing. Unless the accused demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing. The hearing will be conducted as stated in paragraph 3-6, above.

e. Appeal. The appeal and the decision on appeal will be recorded in block 5, DA 2627-1. This will be done according to the procedures set forth in paragraph 3-9, below. The accused will be given a reasonable time (normally no more than five calendar days) within which to submit an appeal. The accused may, pending submission and decision on the appeal, be required to undergo the punishment imposed, but once submitted, such appeal will be promptly decided.

f. Recording and filing of DA 2627-1. The proceedings will be legibly summarized on DA 2627-1, ordinarily with handwritten entries. These forms will be maintained in the local NJP files. They will be destroyed at the end of two years from the date of imposition of punishment or upon the transfer of the accused from the unit, whichever occurs first. A copy will be provided to the accused if a request is submitted during the filing period.

### 3-8. Suspension, mitigation, remission and setting aside.

a. The commander who imposes NJP, or a successor in command over the person punished, may suspend, mitigate, remit or set aside the NJP imposed, subject to the provision discussed below:

(1) Suspension. The commander who imposes NJP, or a successor in command over the person punished, may, at any time, suspend any part or amount of the unexecuted punishment imposed and may suspend a reduction in grade or a forfeiture, whether or not executed, subject to the following rules:

(A) An executed punishment of reduction or forfeiture of pay may be suspended only within a period of four months after the date of execution.

(B) Suspension of a punishment may not be for a period longer than six months from the date of the suspension, and the expiration of the current enlistment or term of service of the accused involved automatically terminates the period of suspension.

(C) Unless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension.

(D) Unless otherwise stated, an action suspending a punishment includes a condition that the accused not violate any punitive article of the FCMJ. The NJP authority may specify in writing additional conditions of the suspension.

(E) A suspension may be vacated by any NJP authority or commander competent to impose upon the accused punishment of the kind and amount involved in the vacation of suspension. Vacation of suspension may be based only on a violation of the conditions of suspension which occurs within 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, the accused should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate suspension of the punishment to present any matters in defense, extenuation, or mitigation of the violation on which the vacation action is to be based. Vacation of a suspended NJP is not itself NJP and additional action to impose NJP for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby.

(2) Mitigation. Mitigation is a reduction in either the quantity or quality of a punishment, its general nature remaining the same. Mitigation is appropriate when the offender's later good conduct merits a reduction in the punishment, or when it is determined that the punishment imposed was disproportionate. The commander who

imposes NJP, or a successor in command may, at any time, mitigate any part or amount of the unexecuted portion of the punishment imposed. The commander who imposes NJP, or a successor in command may also mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay, but the amount of the forfeiture may not be greater than the amount that could have been imposed by the officer who initially imposed the NJP. Reduction in grade may be mitigated to forfeiture of pay only within four months after the date of execution.

(3) Remission. Remission is an action whereby any portion of the unexecuted punishment is cancelled. Remission is appropriate under the same circumstances as mitigation. The commander who imposes NJP, or a successor in command may, at any time, remit any part or amount of the unexecuted portion of the punishment imposed. The expiration of the current enlistment or term of service of the accused automatically remits any unexecuted punishment imposed under Article 15.

(4) Setting aside. Setting aside is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is set aside and any property, privileges, or rights affected by the portion of the punishment set aside are restored. The commander who imposes NJP, or a successor in command may set aside punishment. The power to set aside punishments and restore rights, privileges, and property affected by the executed portion 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 clear injustice. Also, the power to set aside an executed punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed. In this connection, four months is a reasonable time in the absence of unusual circumstances.

b. Recording of such actions. It shall be recorded in blocks 11 and 12 on the DA 2627, and in blocks 9 and 10 on the DA 2627-1.

### 3-9. Appellate review of FLARNG NJP proceedings.

a. Appellate review is a review by the commander of the officer imposing NJP, and is conducted only if the offender timely appeals the imposition of NJP. The review is limited to determining whether the offense was proved and, if so, whether the punishment imposed was just. The appellate authority may approve the punishment as imposed or grant relief to the accused. In granting relief, the appellate authority may suspend, mitigate, remit or set aside the NJP imposed, subject to the provisions discussed in paragraph 3-8, above; but, in no case may the appellate authority increase the severity of the punishment imposed. The appellate authority may order additional proceedings, as discussed in paragraph 3-10, below.

b. Administrative procedures for an appeal are as follows. When the DA 2627 and allied documents, if any, are received at the higher headquarters, the JA should review the proceedings for accuracy, completeness, and compliance with this regulation.

(1) If the proceedings have been determined to be in accordance with this regulation, the JA will complete paragraph 8 of the form by stating: *"These proceedings are found to be in compliance with FNG Reg 27-10."*

(2) If the proceedings have been determined not to be in accordance with this regulation, the JA will briefly state the deficiencies in paragraph 8.

(3) The name and grade blocks under paragraphs 8 and 9 are to be completed using upper case for the name. The JA will date and sign it.

c. The appellate authority will review the proceedings and make a determination as to whether to approve the punishment imposed or to grant relief, as discussed above, by initialing the appropriate block.

d. If the appellate authority wishes to suspend, mitigate, remit or set aside the NJP imposed, the appropriate statement, using Note 12 on the back of DA 2627 as a format, will be typed in paragraph 9 of the DA 2627. The appellate authority will date and sign the action.

e. Additional proceedings. If the appellate authority sets aside an NJP due to a procedural error, that authority may authorize additional proceedings under Article 15, to be conducted by the commander who imposed the NJP, or a successor in command, for the same offenses involved in the original proceedings. Any punishment imposed as a result of these additional proceedings may be no more severe than that originally imposed.

f. The DA 2627 will be returned to the commander who imposed the punishment for rehearing or review by the accused, as appropriate.

g. No further appeals are authorized for NJP proceedings beyond the initial appellate authority.

### 3-10. Supplementary action.

a. Supplementary action is any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed under summarized proceedings) after action has been taken on an appeal.

b. Recording. Supplementary action will be recorded on DA Form 2627-2 (Record of Supplementary Action Under Article 15, FCMJ) (Figure 3-4, Page 52).

### 3-11. Records disposition for FLARNG NJP Proceedings.

a. For E-4s and below (prior to the punishment), the original DA 2627 is to be maintained in the MPRJ of the offender, or the electronic equivalent, if any, in accordance with the imposing commander's directions indicated in block 5 of the DA 2627, to be removed and destroyed no later than two calendar years from the date the final action on the NJP proceedings was completed. (Final action may include an appeal or vacation of the suspended punishment.)

b. For all others, the original will be sent to the appropriate custodian for filing in the OMPF, or the electronic equivalent, if any, as directed by the imposing commander.

c. For NJP imposed below the MACOM/MAJCOM headquarters level, two copies will be forwarded to the next higher headquarters. The legal specialist will review the documents for completeness and correctness, keeping one copy for the headquarters' files.

d. One copy will be maintained in the unit's military justice files.

e. One copy will be given to the Servicemember.

f. The unit clerk will keep a record of any unit punishment on NJP actions by use of DA 5110 (Article 15-Reconciliation Log) (Figure 3-5, Page 53). This form is self-explanatory; however, questions concerning its use should be directed to the legal specialist at the next higher headquarters.

3-12. Administration for punitive reductions. It is the policy of TAG-FL that reduction orders will be issued regardless of the reason for the reduction. This paragraph is the authority for reduction for misconduct. The reason line will state "Violation of FCMJ". A copy of the approved DA 2627 will be attached to the Deputy Chief of Staff personnel (DCSPER) copy of the reduction order.

LEFT BLANK INTENTIONALLY

Figure 3-1 – DA 5109 – Request to Superior to Exercise Article 15, FCMJ, Jurisdiction

M TAB TAB TAB TAB

**REQUEST TO SUPERIOR TO EXERCISE ARTICLE 15, UCMJ, JURISDICTION**

For use of this form, see AR 27-10; the proponent agency is TJAG

**THRU:** *(Include ZIP Code)*  
Cdr, HHC 53rd Infantry Brigade (Sep)  
2801 Grand Avenue  
Pinellas Park, FL 33782

**TO:** *(Include Zip Code)*  
Cdr, HQ 53rd Infantry Brigade (Sep)  
2801 Grand Avenue  
Pinellas Park, FL 33782

*(Check appropriate block and complete narrative)*

It has been reported \_\_\_\_\_ The enclosed file indicates \_\_\_\_\_ that on or  
about 17 April 2006 at AFRC, Pinellas Park, FL 33782  
*(Date)* *(Place)*  
Soldier was AWOL from formation on or about 17 April 2006, to wit: Armed Forces Reserve Center located at 2801

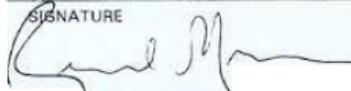
**Grand Avenue Pinellas Park, FL 33782. This is a violation of Article 86, FCMJ**

**NOTE:** Insert the name and organization of the individual concerned and the nature of the alleged misconduct in the form of a clear and concise statement of an offense that constitutes conduct punishable under the UCMJ and the article of the UCMJ violated.

2. I recommend that you exercise your authority under the provisions of Article 15, UCMJ, in the disposition of this case.

3. Enclosures: *(List)*  
DA Form 2823 - Sworn Statement (First Sergeant)

NAME, GRADE, AND ORGANIZATION OF COMMANDER  
REINALDO MONTERO  
MAJ, HHC, 53rd Infantry Brigade (Sep)

SIGNATURE  


DATE  
18 April 2006

Figure 3-2 – DA 2627 – Record of Proceedings Under Article 15, FCMJ (FRONT)

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ				
For use of this form, see AR 27-10; the proponent agency is TJAG.				
See Notes on Reverse Before Completing Form				
NAME	GRADE	SSN	UNIT	PAY (Basic & Sea/Foreign)
DOE, JOHN A.	SGT	987-65-4321	HHC, 2-124 INF BN	2,124.60
<p>1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: <sup>✓</sup>                      In that you did, on or about June 1, 2006, without authority and with intent to avoid Annual Training, absent yourself from your unit, to wit: HHC, 2-124 INF BN located at Camp Blanding Joint Training Center, Florida, and did remain so absent until on or about June 14, 2006.</p> <p>2. You are not required to make any statements, but if <del>you do</del>, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished at all (<i>matters of defense</i>) or why punishment should be very light (<i>matters of extenuation and mitigation</i>). I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. <sup>✓</sup> If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial court-martial instead. <sup>✓</sup> In deciding what you want to do you have the right to consult with legal counsel located at MAJ Ray Judicata - (904) 555-6666. You now have 48 hours to decide what you want to do. <sup>✓</sup></p>				
DATE TIME	NAME, GRADE, AND ORGANIZATION OF COMMANDER			SIGNATURE
21 Jun 06 0900	Jack A. Grey, CPT, HHC, 2-124 INF BN			
<p>3. Having been afforded the opportunity to consult with counsel, my decisions are as follow: (<i>Initial appropriate blocks, date, and sign</i>)</p> <p>a. <input type="checkbox"/> I demand trial by court-martial.</p> <p>b. <input checked="" type="checkbox"/> I do not demand trial by court-martial and in the Article 15 proceedings:</p> <p>(1) I request the hearing be <input type="checkbox"/> Open <input checked="" type="checkbox"/> Closed. (2) A person to speak in my behalf <input type="checkbox"/> Is <input checked="" type="checkbox"/> Is not requested.</p> <p>(3) Matters in defense, mitigation, and/or extenuation: <input checked="" type="checkbox"/> Are not presented <input type="checkbox"/> Will be presented in person <input type="checkbox"/> Are attached.</p>				
DATE	NAME AND GRADE OF SERVICE MEMBER			SIGNATURE
23 Jun 06	John A. Doe, SGT			John A. Doe
<p>4. In a(n) <input type="checkbox"/> Open <input checked="" type="checkbox"/> Closed hearing <sup>✓</sup> all matters presented in defense, mitigation, and/or extenuation, having been considered, the following punishment is imposed: <sup>✓</sup> <sup>✓</sup>                      Written reprimand and a fine of \$100.00.</p>				
<p>5. I direct the original DA Form 2627 be filed in the <input checked="" type="checkbox"/> Performance fiche <input type="checkbox"/> Restricted fiche of the OMPP. <sup>✓</sup></p> <p>6. You are advised of your right to appeal to the <u>Commander, 2-124 INF BN</u> within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.</p>				
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER			SIGNATURE
23 Jun 06	Jack A. Grey, CPT			Jack A. Grey
<p>7. (<i>Initial appropriate block, date, and sign</i>)</p> <p>a. <input type="checkbox"/> I do not appeal b. <input checked="" type="checkbox"/> I appeal and do not submit additional matters <sup>✓</sup> <sup>✓</sup> c. <input type="checkbox"/> I appeal and submit additional matters <sup>✓</sup> <sup>✓</sup></p>				
DATE	NAME AND GRADE OF SERVICE MEMBER			SIGNATURE
23 Jun 06	John A. Doe, SGT			John A. Doe
<p>8. I have considered the appeal and it is my opinion that: the proceedings are found to be in compliance with FNG Reg 27-10.</p>				
DATE	NAME AND GRADE OF JUDGE ADVOCATE			SIGNATURE
29 Jun 06	Perry A. Mason, MAJ			Perry A. Mason
<p>9. After consideration of all matters presented in appeal, the appeal is:  <input checked="" type="checkbox"/> Denied <input type="checkbox"/> Granted as follows: <sup>✓</sup></p>				
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER			SIGNATURE
3 July 06	John A. Smith, LTC			John A. Smith
10. I have seen the action taken on my appeal.		DATE	SIGNATURE OF SERVICE MEMBER	
		5 July 06	John A. Doe	
11. ALLIED DOCUMENTS AND/OR COMMENTS 11/ 12/ 13/				

## DA 2627 – Record of Proceedings Under Article 15, FCMJ (BACK)

## NOTES

- <sup>1</sup> Insert a concise statement of each offense in terms stating a specific violation and the Article of the UCMJ (*Part IV, MCM*). If additional space is needed, use item 11 or continuation sheets as described in note 11 below.
- <sup>2</sup> Inform the member of the maximum punishment which may be imposed under Article 15.
- <sup>3</sup> Inform the member that if he or she demands trial, trial could be by SCM, SPCM, or GCM. Additionally, inform the member that he or she may object to trial by SCM and that at SPCM or GCM he or she would be entitled to be represented by qualified military counsel, or by civilian counsel at no expense to the government. If the member is attached to or embarked in a vessel, he or she is not permitted to refuse Article 15 punishment. In such cases, all reference to a demand for trial will be lined out and an appropriate remark will be made in item 11 indicating the official name of the vessel and that the member was attached to or embarked in the vessel at the time punishment was imposed.
- <sup>4</sup> Give the member copy 5 of this form.
- <sup>5</sup> Offenses determined not to have been committed will be lined out. If the imposing commander decides not to impose any punishment, the member will be notified and all copies of this form destroyed.
- <sup>6</sup> Amounts of forfeitures of pay will be rounded off to the next lower whole dollar. If a punishment is suspended, the following statement should be added after it: To be automatically remitted if not vacated before (date). If punishment includes a written admonition or reprimand, it will be attached to this form and listed in item 11.
- <sup>7</sup> The imposing commander will initial the appropriate block. The OMPF performance fiche is routinely used by MOS/specialty career managers and DA selection boards. The OMPF restricted fiche is not given to MOS/specialty career managers or DA selection boards without approval of the Cdr, MILPERCEN or selection board proponent.
- <sup>8</sup> If the member appeals, this form and all written evidence considered by the imposing commander will be forwarded to the superior authority.
- <sup>9</sup> Before acting on an appeal, it must be referred to a judge advocate for advice when the punishment, whether or not suspended, includes reduction of one or more pay grades from the fourth or a higher pay grade, or is in excess of one of the following: 7 days arrest in quarters, 7 days correctional custody, 7 days forfeiture of pay, or 14 days of either extra duties or restriction. (*See Article 15e (1) to (7), UCMJ.*)
- <sup>10</sup> The superior authority will initial the appropriate block. If the appeal is granted, the specific relief granted will be stated according to note 12.
- <sup>11</sup> In this space indicate the number of pages attached as follows: Allied documents on appeal consist of \_\_\_\_\_ pages. Allied documents include all written matters considered by the imposing commander submitted by the member on appeal and the commander's rebuttal, if applicable. If additional space is needed for completion of any item (s), use plain bond headed "Continuation Sheet 1", etc.
- <sup>12</sup> Applicable portions of the following format may be used to record action taken on appeal. Appropriate language should be entered in item 11 or, if necessary, on a continuation sheet. Supplementary actions (*para 3-38, AR 27-10*) will be recorded on DA Form 2627-2.

Suspension, Mitigation, Remission, or Setting Aside

(DATE)

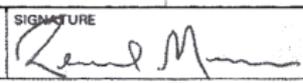
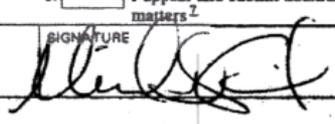
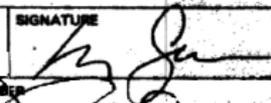
On (date), The punishment(s) of \_\_\_\_\_, imposed on (date of punishment) (was) (were) (suspended and will be automatically remitted if not vacated before (date)) (mitigated to) (set aside, and all rights, privileges, and property affected restored) (by my order) (by order of) (the officer who imposed the punishment) (the successor in command to the imposing commander) (as superior authority).

(Typed name, grade, and organization of commander)

/s/ \_\_\_\_\_

- <sup>13</sup> Racial/ethnic identifiers will be placed in Item 11 (*Chapter 15, AR 27-10*).

Figure 3-3 – DA 2627-1 - Summarized Record of Proceedings Under Article 15, FMCJ (FRONT)

FCMJ <b>SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ</b> <small>For use of this form, see AR 27-10; the proponent agency is T.JAG.</small>		
<i>See Notes on Reverse Before Completing Form</i>		
This form will be used only in cases involving enlisted personnel and then <i>ONLY</i> when no punishment <i>OTHER THAN</i> oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof has been imposed. <sup>1</sup>		
NAME	GRADE	SSN
RILEY MICHAEL D	E6	012-34-5678
UNIT		
HQ, 53rd Infantry Brigade (Sep)		
1. On <u>22 March 2006</u> , the above service member was advised that I was considering imposition of nonjudicial punishment under the provisions of Article 15, UCMJ, Summarized Proceedings, for the following misconduct: <sup>2</sup>  In that you did, at the AFRC located in Pinellas Park, FL, on or about 3 March 2006, without authority, fail to go to your appointed place of duty, at the time prescribed, to wit: Period(s) 1-5 of the scheduled MUTA-5. This is a violation of Article 86, FCMJ.		
2. The member was advised that no statement was required, but that any statement made could be used against him or her in the proceeding or in a court-martial. The member was also informed of the right to demand trial by court-martial <sup>3</sup> , the right to present matters in defense, extenuation and/or mitigation, that any matters presented would be considered by me before deciding whether to impose punishment, the type or amount of punishment, if imposed, and that no punishment would be imposed unless I was convinced beyond a reasonable doubt that the service member committed the misconduct. The service member was afforded the opportunity to take 24 hours to make a decision regarding these rights. No demand for trial by court-martial was made. After considering all matters presented, the following punishment was imposed: <sup>4</sup>  Reduction in Grade to SGT/E5, suspended, and to be automatically remitted if not sooner vacated by 01 October 2006. Fined \$200.00 to be paid directly to the Armed Forces Reserve Center (Armory Operations Account).		
3. The member was advised of the right to appeal to the <u>Brigade Commander</u> within 5 calendar days, that an appeal made after that time could be rejected as untimely, and that the punishment was effective immediately unless otherwise stated above. The member:		
<input checked="" type="checkbox"/> Elected immediately not to appeal <input type="checkbox"/> Requested time to decide whether to appeal and the decision is indicated in item 4, below. <sup>5</sup>		
DATE	NAME, GRADE, AND ORGANIZATION OF IMPOSING COMMANDER	SIGNATURE
22 March 2006	REINALDO MONTERO, MAJ, HHC 53rd SIB	
4. (Initial appropriate block, date, and sign) a. <input type="checkbox"/> I do not appeal    b. <input checked="" type="checkbox"/> I appeal and do not submit matters for consideration <sup>2</sup> c. <input type="checkbox"/> I appeal and submit additional matters <sup>2</sup>		
DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE
22 March 2006	MICHAEL D RILEY, SSG	
5. After consideration of all matters presented in appeal, the appeal is:		
<input checked="" type="checkbox"/> Denied <input type="checkbox"/> Granted as follows: <sup>6</sup>		
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
23 March 2006	RICHARD J GALLANT, COL, HQ, 53rd Infantry Brigade (Sep)	
6. I have seen the action taken on my appeal.		DATE
		23 March 2006
7. ALLIED DOCUMENTS AND/OR COMMENTS <sup>7, 8, 9</sup>		SIGNATURE OF SERVICE MEMBER
		

DA 2627-1 –Summarized Record of Proceedings Under Article 15, FCMJ (BACK)

NOTES

- <sup>1</sup> See AR 27-10 for further guidance. Ordinarily entries on this form will be handwritten in ink.
- <sup>2</sup> Insert a concise statement of each offense in terms stating a specific violation and the Article of the UCMJ. If additional space is needed, use item 7 and/or continuation sheets as described in note 9 below.
- <sup>3</sup> Inform the member that if he or she demands trial, trial could be by SCM, SPCM, or GCM. Additionally, inform the member that he or she may object to trial by SCM and that at SPCM or GCM he or she would be entitled to be represented by qualified military counsel, or by civilian counsel at no expense to the government. If the member is attached to or embarked in a vessel, he or she is not permitted to refuse Article 15 punishment. In such cases, all reference to a demand for trial will be lined out and an appropriate remark will be made in item 7 indicating the official name of the vessel and that the member was attached to or embarked in the vessel at the time punishment was imposed.
- <sup>4</sup> Offenses determined not to have been committed will not be listed. If the imposing commander decides not to impose punishment, the member will be notified and no copies of this record will be prepared. If a punishment is suspended, the following statement should be added after it: "To be automatically remitted if not vacated before (date)."
- <sup>5</sup> If the member immediately elects not to appeal, item 5 will not be completed.
- <sup>6</sup> The imposing commander will initial the appropriate block.
- <sup>7</sup> If the individual appeals, this form and all matters set forth in item 7 will be forwarded to the superior authority.
- <sup>8</sup> The superior authority will initial the appropriate block. Refer to note 10, below.
- <sup>9</sup> In this space indicate the number of pages as follows: Allied documents on appeal consist of \_\_\_\_\_ pages. Allied documents include all written matters considered by the imposing commander, submitted by the member on appeal, commander's rebuttal, and copies of supplementary actions taken on the punishment. Supplementary actions will be recorded in accordance with note 10. If additional space is needed for completion of any item(s), use plain bond headed "Continuation Sheet 1," etc.

<sup>10</sup> Applicable portions of the following suggested formats may be used to record action taken on an appeal and supplementary actions for summarized Article 15 proceedings. Appropriate language should be entered in item 7 or, if necessary, on continuation sheets.

a. Suspension, Mitigation, Remission, or Setting Aside.

On (date) the punishment(s) of \_\_\_\_\_, imposed on (date of punishment) (was) (were) (suspended and will be automatically remitted if not vacated before (date)) (mitigated to) (set aside, and all rights, privileges, and property affected restored) (by my order) (by order of) (the officer who imposed the punishment) (the successor in command to the imposing commander) (as superior authority).

(Typed name, grade, and organization of commander) /s/ \_\_\_\_\_

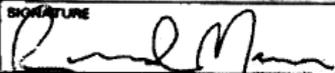
b. Vacation of Suspension

The suspension of the punishment(s) of \_\_\_\_\_ imposed on (date of punishment) (is) (are) hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed.

(Typed name, grade, and organization of commander) /s/ \_\_\_\_\_

<sup>11</sup> Racial/ethnic identifiers will be placed in item 7 (Chap 15, AR 27-10).

Figure 3-4 – DA 2627-2 – Record of Supplementary Action Under Article 15, FCMJ

FCMJ RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, FCMJ <small>For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.</small>		
NAME AND GRADE <b>MICHAEL D RILEY, SSG</b>		SSN 012-34-5678
UNIT HQ, 53rd Infantry Brigade (Sep) Pinellas Park, FL 33782		
TYPE OF SUPPLEMENTARY ACTION (OTHER THAN BY SUPERIOR AUTHORITY ACTING ON APPEAL) (Check appropriate box)		
<input type="checkbox"/> SUSPENSION (Complete item 1 below) <input type="checkbox"/> MITIGATION (Complete item 2 below) <input type="checkbox"/> REMISSION (Complete item 3 below)		
<input type="checkbox"/> SETTING ASIDE (Complete item 4 below) <input checked="" type="checkbox"/> VACATION OF SUSPENSION (Complete item 5 below)		
<b>1. SUSPENSION</b>		
The punishment(s) of _____		
imposed on the above service member on _____ (is) (are) suspended and will automatically be remitted if not vacated		
<small>(date of punishment)</small>		
before _____		
<small>(date)</small>		
<b>2. MITIGATION</b>		
The punishment(s) of _____		
imposed on the above service member on _____ (is) (are) mitigated to _____		
<small>(date of punishment)</small>		
<b>3. REMISSION</b>		
The punishment(s) of _____		
imposed on the above service member on _____ (is) (are) remitted.		
<small>(date of punishment)</small>		
<b>4. SETTING ASIDE</b>		
The punishment(s) of _____		
imposed on the above service member on _____ (is) (are) set aside on the basis that _____		
<small>(date of punishment)</small>		
All rights, privileges, and property affected are hereby restored.		
<b>5. VACATION OF SUSPENSION</b>		
a. The suspension of the punishment(s) of <u>Reduction in Grade to SGT/E5</u>		
imposed on the above service member on <u>22 March 2006</u> (is) (are) hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed.		
<small>(date of punishment)</small>		
b. Vacation is based on the following offense(s): <u>Absent for formation 24 March 2006, Article 86 FCMJ.</u>		
c. The member (was) (was not) given an opportunity to rebut (para 3-25, AR 27-10).		
d. The member (was) (was not) present at the vacation proceeding (para 3-25, AR 27-10).		
ORIGINAL DA FORM 2627 (Check appropriate box)		
DIRECTED FOR FILING ON THE <input checked="" type="checkbox"/> PERFORMANCE <input type="checkbox"/> RESTRICTED FICHE OF THE OMPF.		
<b>AUTHENTICATION (Check appropriate boxes)</b>		
<input checked="" type="checkbox"/> BY MY ORDER <input checked="" type="checkbox"/> THE OFFICER WHO IMPOSED THE PUNISHMENT		
<input type="checkbox"/> THE SUCCESSOR IN COMMAND TO THE IMPOSING COMMANDER <input type="checkbox"/> AS SUPERIOR AUTHORITY		
DATE <b>25 MAR 06</b>	NAME, GRADE, AND ORGANIZATION OF COMMANDER <b>REINALDO MONTERO, CPT, HHC 53rd SIB</b>	SIGNATURE 



LEFT BLANK INTENTIONALLY

**THE FOLLOWING PROCEDURES FOR IMPOSING NJP ARE FOR AIR NATIONAL GUARD PERSONNEL ONLY.**

**ARMY NATIONAL GUARD NJP PROCEDURES ARE SET FORTH ABOVE IN CHAPTER 3, PART I, OF THIS REGULATION.**

## **PART II - AIR NATIONAL GUARD PROCEDURES**

### **3-13. Purpose.**

a. A commander may impose NJP proceedings for minor offenses committed by military personnel of his command when non-punitive measures fail to remedy a problem, or when the offense is more serious than non-punitive measures would address. Non-Judicial Punishment is a valuable tool in maintaining the discipline and efficiency of a command. In determining whether NJP is appropriate, the commander should consider the age, experience, intelligence, and prior disciplinary and military record of the accused, as well as all facts and circumstances surrounding the commission of the offense.

b. Non-Judicial Punishment may be administered to any member of the FLNG.

(1) Enlisted personnel may receive NJP from their unit commander, or any higher commander in their COC.

(2) Warrant and company grade officers may receive NJP from any field grade or general officer in their COC.

(3) Field grade officers may receive NJP from any general officer in their COC.

c. Non-judicial punishment cannot be imposed unless the accused is present for the proceedings. Regardless of whether or not prior notice of intent to impose NJP was given, an accused must be physically present to impose any punishment under Article 15, FCMJ.

### **3-14. Non-punitive measures.**

a. General. Before NJP is imposed commanders should consider alternative non-punitive measures. Commanders should impose NJP to correct misconduct in violation of the FCMJ. Such conduct may result from intentional disregard of, or failure to comply with, prescribed standards of military conduct. Non-punitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies.

b. These measures are primarily tools for teaching proper standards of conduct and performance and do not constitute punishment. Included among non-punitive measures are denial of pass or other privileges, counseling, administrative reduction/demotion in grade, administrative reprimands and admonitions, extra training, bar to reenlistment, and MOS reclassification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons. This authority exists apart from any authority to punish misconduct under Article 15, FCMJ. These two separate and distinct kinds of authority should not be confused.

c. Reprimands and admonitions.

(1) Commanders have authority to give admonitions or reprimands either as an administrative measure or as NJP.

(2) A written administrative admonition or reprimand will contain a statement that it has been imposed as an administrative measure and not as punishment under Article 15. Admonitions and reprimands imposed as punishment under Article 15, whether administered verbally or in writing (Para 5c(1), Part V, MCM), should state clearly that they were imposed as punishment under that Article.

d. Extra training or instruction. One of the most effective non-punitive measures available to a commander is extra training or instruction. It is used when a Servicemember's duty performance has been substandard or deficient; for example, a Servicemember who fails to maintain proper attire may be required to attend classes on the wearing of the uniform and stand inspection until the deficiency is corrected. The training or instruction must relate directly to the deficiency observed and must be oriented to correct that particular deficiency.

3-15. Personal exercise of discretion.

a. When a commander has knowledge that an offense under the FCMJ may have been committed and, after having the incident investigated, further determines that a violation of the FCMJ has occurred, he may initiate NJP proceedings. A commander will personally exercise discretion in the NJP process by:

(1) Evaluating the case to determine whether proceedings under Article 15 should be initiated;

(2) Determining whether the accused committed the offense where NJP proceedings are initiated and the accused does not demand trial by court-martial; and

(3) Determining the amount and nature of any punishment, if punishment is appropriate.

b. No superior may direct that a subordinate authority impose NJP or issue regulations, orders, or so-called "guides" that either directly or indirectly suggests to subordinate commanders that:

(1) Certain categories of offenders or offenses should be disposed of by NJP; or

(2) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses.

c. A superior commander may send or return a case to a subordinate for appropriate disposition, if necessary, and within the jurisdiction of the subordinate. A superior commander may also reserve personally, or to the superior commander's delegate, the right to exercise Article 15 authority over a particular case or over certain categories of offenders or offenses.

d. Referring matters to the next higher level of NJP authority.

(1) Any commander may refer NJP proceedings to their higher headquarters when:

(A) The offense that is the subject of the NJP proceedings involves senior enlisted personnel (E-5 to E-9); and/or

(B) The nature or seriousness of the offense is such as to be more appropriately disposed of by higher headquarters.

(2) Any commander below Wing level must refer NJP proceedings to their higher headquarters when the offense involves a commissioned officer, or E-9 enlisted personnel.

(3) If a commander wishes to refer a matter to the next higher level of NJP authority to considered imposing NJP, the commander shall make such requests using standard military correspondence.

3-16. Maximum punishments. As authorized by Section 250.35, Fla. Stat., a commander who imposes NJP for an offense committed by a unit member may impose the following punishments:

a. Verbal or written reprimand;

b. Extra duty, not to exceed 14 consecutive dates of Active Duty (SAD, AT, etc.), or 14 consecutive UTAs;

c. Restriction to the armory, training site, or other specified limits, with or without suspension from duty, not to exceed 14 consecutive days of Active Duty (SAD, AT, etc.), or 14 consecutive UTAs;

d. Fines not to exceed \$200.00 for any given NJP;

e. Reduction by one grade of a member whom the commander had the authority to promote; or

f. Any combination of the above, except that an imposition of extra duty and restriction must be concurrent and cannot total more than 14 days.

### 3-17. Florida Air National Guard NJP procedures.

a. A commander initiating an NJP proceeding completes item 1 of the AF 3070 (Record of Nonjudicial Proceedings) (Figure 3-6, page 67), signs and dates the form, and causes the member to be notified and advised of his rights using AF 3070. Normally, the initiating commander notifies and serves the member, then signs and annotates the date and time the member was served notice of the proceeding in item 2 of AF 3070. Alternatively, the initiating commander may direct a subordinate, senior in rank to the member (when practicable), to notify and serve the member. The subordinate annotates the date and time of service and signs in item 2 as the person serving the member. The member must be provided a copy of all three pages of AF 3070 and any attachments, and be permitted to review all statements and evidence upon which the commander intends to rely in making his decision.

b. Election of rights by member.

(1) Decision period. If the accused wishes to consider the NJP before deciding to accept it, the commander must set a time and date for the accused to reappear for disposition of the proceedings. An accused is authorized 48 hours to consult with counsel, however, commanders shall extend the 48 hour period to contact counsel depending on the availability of the JA assigned defense counsel duties. If the accused chooses to proceed and dispose of the matter immediately, the commander may proceed with the hearing.

(2) Member's rights election. After affording the accused time to consider the offer of NJP action, within the authorized time frame, the accused must make a decision to demand trial by court-martial or accept NJP. The member must reflect his NJP decision by initialing the appropriate blocks in item 3 of AF 3070, sign and annotate the date and time signed.

c. Commander's action.

(1) If the accused demands trial by court-martial, the commander may proceed with preferring charges for trial. Once an accused demands trial, the accused may withdraw it only by written request, approved by the commander. If approved, the written request becomes an attachment to the NJP proceedings, which may proceed with pen ink changes to the original form, or by initiating a new form.

(2) If the accused accepts NJP, the commander may continue with the hearing.

(3) If the accused does not reply with his elections in time, the commander may continue with the NJP proceeding. In such a case, the commander will note "member failed to respond" and initials item 3 of AF 3070. The member's failure to respond in time is deemed an acceptance of NJP. However, if the commander has reason to believe a failure to respond resulted from reasons beyond the accused's control; the commander may not, without good cause, proceed with NJP action.

d. Hearing procedures.

(1) The hearing consists of the following:

(A) Consideration of evidence, written or verbal, against the accused by the commander.

(B) Examination of all available evidence by the accused.

(C) Presentation by the accused of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.

(D) Determination of guilt or innocence by the imposing commander, and, if guilty, imposition of punishment.

(2) Ordinarily, hearings are open. However, an accused may request a closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed. An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business, that is, the commander's office. A closed hearing is one in which the commander decides that members of the public will not attend. The fact that a accused requests and is granted a closed hearing does not preclude announcement of punishment as provided in Paragraph 3-17h below. The fact that a closed hearing has been granted does not preclude the appearance of witnesses. The commander may grant a request for a closed hearing, yet allow the attendance of certain members of the chain of command or others deemed appropriate to the conduct of the proceedings.

(3) The accused has the right to have someone speak in his behalf; i.e., first-line supervisor, etc.

(4) Matters of defense, mitigation, and/or extenuation are documents and/or testimony used to diminish or discount the offense the accused is being charged with. The accused may or may not have any evidence to present.

(5) Because the proceedings are not adversarial in nature, neither the accused nor his spokesperson (including any attorney present on behalf of the accused) may examine or cross-examine witnesses, unless permitted by the imposing commander. The accused or his spokesperson may, however, indicate to the commander imposing NJP relevant issues or questions they wish to have explored or asked.

e. Commander's findings.

(1) To find an accused guilty, the commander must be convinced beyond a reasonable doubt that the accused committed the offense(s). The commander is not required to make his findings immediately upon completion of receiving the testimony and evidence. The commander can, and probably should, take some time to weigh the evidence and deliberate before making a decision in the matter.

(2) If the accused is found not guilty of all offenses, the commander will mark or initial the appropriate block in item 4 on AF 3070. A copy of the AF 3070 will be forwarded to the next higher headquarters and a copy will be maintained in the unit files.

(3) If the accused is found guilty of one or more offenses, the commander will:

(A) announce the findings to the offender;

(B) line out and initial any offense(s) for which NJP is not appropriate or which the accused did not commit; and

(C) record the findings by marking or initialing the appropriate block in item 4 on the AF 3070.

f. Imposition of punishment.

(1) When there is finding of guilt, the commander must also decide on the type of punishment, taking into consideration matters of mitigation and extenuation. The offender should be informed of the punishment and acknowledge receipt of the action on the same date punishment is imposed.

(2) The commander records imposition of punishment by marking or initialing the appropriate block in item 4 and listing the punishment in item 14 on the AF 3070.

g. Appeal notice by FLANG personnel.

(1) After the commander advises the offender of the punishment:

(A) The commander directs the offender to acknowledge receipt of the punishment and right to appeal by signing item 5 of AF 3070, and then annotating the date and time signed. If the offender refuses to acknowledge receipt of the punishment and rights to appeal, the commander will note in item 5 "member refused to acknowledge receipt of punishment and right to appeal" and initial. The time limit for appeal is still applicable despite the offender's failure to sign.

(B) The commander informs the offender of his appeal rights and obligations as reflected in the AF 3070. The offender must reflect his appeal decision by initialing only one block in item 6 of the AF 3070, sign and annotate the date and time signed. If the offender refuses to sign his appeal decision within the time limit for appeal, that failure is deemed a waiver of his appeal rights and the commander will note "member refused to make appeal decision within the time limit for appeal" and initial in item 6 of the AF 3070.

(C) If the offender elects to appeal:

(i) The offender must submit all documents supporting the appeal at the same time as the appeal decision. NOTE: Punishment may be executed while appeal is pending.

(ii) The imposing commander examines the written matters submitted, if any, and after consulting with a JA, may grant the relief requested in whole or part, by using his powers to suspend, mitigate, remit or set aside the punishment. The imposing commander records his decision on the appeal in item 7 of the AF 3070 by initialing the appropriate block and signing the form.

(iii) If the imposing commander grants relief, he annotates the relief granted in item 14. The annotation should state "As the commander who imposed nonjudicial punishment, I grant your appeal [(in full)(in part)] as follows: (State the specific relief granted)." If the imposing commander grants full relief, do not forward the appeal. If the commander grants less than full relief requested, forward the appeal to the appellate authority.

(iv) If the appeal is forwarded, the imposing commander adds written comments by endorsement through the servicing SJA addressing any contentions raised by the offender. The imposing commander states in the forwarding endorsement whether the offender has served any portion of the punishment and includes in the package all written material considered in imposing the punishment, including a summary of the member's oral presentation, if applicable, as well as a summary of any

other information considered and its source. The endorsement may state the commander's rationale for imposing punishment and a recommendation for action on the appeal. The offender is not entitled to a copy of the imposing commander's endorsement.

(D) After the appeal is completed:

(i) The imposing commander makes the Unfavorable Information File (UIF) determination in item 9 of the AF 3070 by initialing, signing and dating the appropriate block. It is within the commander's discretion to provide the member with an opportunity to respond to the UIF decision, regardless of whether the entry of the NJP record in the UIF is mandatory or optional.

(ii) The offender acknowledges that he was informed about the commander's UIF decision and action taken on any appeal by signing item 10 on the AF 3070, and annotating date signed. If the offender refuses to sign, the commander will note in item 10 "member refused to sign" and initial.

h. Publication of punishment.

(1) The finding of guilty and punishment may be publicly announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. After deleting the social security number of the offender and other relevant privacy information, the results of the NJP may be posted on the unit bulletin board.

(2) The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other members. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishments that might result in the appearance of vindictiveness or favoritism. In deciding whether to announce punishment of an offender in the grade of E-5 or above, the following should be considered:

- (A) The nature of the offense;
- (B) The offender's military record and duty position;
- (C) The deterrent effect;
- (D) The impact on unit morale or mission;
- (E) The impact on the victim; and
- (F) The impact on the leadership effectiveness of the offender.

### 3-18. Florida Air National Guard supplementary actions.

a. Authority to take supplementary actions. Supplementary actions may be taken by the appeal authority as part of the appeal process, and by the commander imposing NJP. The imposing commander may take such action upon his own initiative or upon a request from the member. An imposing commander's power to take supplementary action passes to any successor in command. However, a commander can take supplementary action on a particular punishment only if he has the authority to impose that punishment.

#### b. Types of supplementary actions.

(1) Suspension. Suspension is the postponement of the application of all or part of the punishment for a specific probationary period, until a specified date. It will be automatically remitted (cancelled) at the end of that period, if the member does not violate the condition(s) of suspension. The commander may, at any time, suspend any part or amount of the unexecuted punishment imposed and may suspend a reduction in grade or a forfeiture, whether or not executed, subject to the following rules:

(A) An executed punishment of reduction in grade or forfeiture of pay may be suspended only within a period of 4 months after the date of execution.

(B) Suspension of a punishment may not be for a period longer than 6 months from the date of the suspension, and the expiration of the current enlistment or term of service of the member involved automatically terminates the period of suspension.

(C) Unless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension.

(D) Suspension automatically includes a condition that the member not violate any punitive article of the FCMJ. The commander may specify in writing additional conditions of the suspension.

(2) Mitigation. Mitigation is a reduction in either the quantity or quality of a punishment, its general nature remaining the same. Mitigation is appropriate when the member's later good conduct merits a reduction in the punishment, or when it is determined that the punishment imposed was disproportionate. The commander may, mitigate any part or amount of the unexecuted portion of the punishment imposed. The commander may also mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay, but the amount of the forfeiture may not be greater than the amount that could have been imposed by the commander who initially imposed the NJP. Reduction in grade may be mitigated to forfeiture of pay only within 4 months after the date of execution.

(3) Remission. Remission is a cancellation of any portion of the unexecuted punishment. Remission is appropriate under the same circumstances as mitigation. Since an unsuspended reduction in grade is executed on imposition, it can never be remitted, but under appropriate circumstances may be suspended, mitigated or set aside. The expiration of the current enlistment or term of service of the member automatically remits any unexecuted punishment imposed under Article 15.

(4) Set aside. Setting aside is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is removed from the record and any property, privileges, or rights affected by the relevant portion of the punishment are restored. The power to set aside punishments and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the commander believes that, under all circumstances of the case, the punishment has resulted in clear injustice. Also, the power to set aside an executed punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed. In this connection, 4 months is a reasonable time in the absence of unusual circumstances. A set aside of all punishment voids the entire NJP action and restores the member to the position held before imposition of punishment, as if the Article 15 had never been initiated.

(5) Vacation of suspension.

(A) A commander may vacate all or a portion of a suspended punishment using AF 366 (Record of Proceedings of Vacation of Suspended Nonjudicial Punishment) (Figure 3-7, page 70).

(i) Notice to member. The commander completes item 1 of AF 366, signs and dates the form, and causes the member to be notified and advised of his rights, using the form. The commander, or his designee, signs and annotates the date and time the member is served in item 2 of AF 366. The member shall be provided a copy of both pages of AF 366 and be permitted to review all statements and evidence upon which the commander intends to rely.

(ii) Member's rights election. The member has three duty days to make his elections, which he records by initialing in item 3 of AF 366. The commander may grant an extension of time for good cause. If the member does not reply in time, the commander may continue with the proceedings and note in item 3 of AF 366 "member failed to respond" and initial, unless the commander has reason to believe the reason for the failure to respond was beyond the member's control.

(iii) Commander's decision. The member may present matters in defense, extenuation, or mitigation, and make either a written presentation or personal appearance. At the personal appearance, the member may present evidence, present witnesses, and be accompanied by someone to speak on his behalf. There is no

requirement that a lawyer be made available to accompany the member. Following full and fair consideration of the evidence, the commander indicates his actions in item 4a of the AF 366 by marking or initialing the appropriate block, then completes item 4 of the AF 366, and signs and dates the form. Punishment is recorded in item 9 of the AF 366.

(iv) Advising the member. At the time the commander informs the member of the vacation decision, the commander directs the member to acknowledge the action and that there is no right to appeal by signing and dating item 5 of the AF 366. If the member refuses to so acknowledge, the commander will note in item 5 "member refused to acknowledge receipt of vacation action" and initial.

c. Recording supplementary actions. Supplementary actions shall be recorded using AF 3212 (Record of Supplementary Action Under Article 15, FCMJ) (Figure 3-8, page 72), unless such actions are accomplished as part of an appeal, and AF 366 will be used to vacate a suspension.

### 3-19. Appellate review for FLANG NJP proceedings.

a. Appellate review is a review by the commanding officer of the officer imposing NJP, and is conducted only if the offender timely appeals the imposition of NJP. The review is limited to determining whether the offense or offense was proved, and, if so, whether the punishment imposed was just. The Appellate Authority may approve the punishment as imposed or grant relief to the accused. In granting relief, the Appellate Authority may suspend, mitigate, remit or set aside the NJP imposed, subject to the provisions discussed in paragraph 3-18, above; but, in no case may the Appellate Authority increase the severity of the punishment imposed. The Appellate Authority may order additional proceedings, as discussed in paragraph 3-19c, below.

#### b. Processing the Appeal.

(1) Florida Air National Guard JA review. When the AF 3070 and allied documents, if any, are received at the higher headquarters, the JA should review the proceedings for accuracy, completeness, and compliance with this Regulation. A FLANG JA review will be documented by a standard endorsement to the Appellate Authority advising whether the proceedings are in compliance with FNG Regulation 27-10, and, if not, briefly stating the deficiencies.

(2) Appellate action. The Appellate Authority will review the proceedings and make a determination as to whether to approve the punishment imposed or to grant relief, as discussed above, by initialing the appropriate sections of the AF 3070. The Appellate Authority records his decision on the appeal in item 8 of the AF 3070 by initialing the appropriate block and signing the form. Relief granted (in full or in part) is recorded in item 14. Unless otherwise stated, relief granted is effective from the date the punishment was initially imposed.

c. Additional proceedings. If the Appellate Authority sets aside an NJP due to a procedural error, that authority may authorize additional proceedings under Article 15, to be conducted by the commander who imposed the NJP, or a successor in command, for the same offenses involved in the original proceedings. Any punishment imposed as a result of these additional proceedings may be no more severe than that originally imposed.

d. Post-appeal processing. The AF 3070 will be returned to the commander who imposed the punishment for final action. After completing item 9 of AF 3070 regarding his UIF decision, the commander will have the member complete item 10 acknowledging notice of the appeal and the imposing commanders UIF decision. The AF 3070 is then forwarded to the SJA for completion of items 11 – 13 of the AF 3070.

e. No further appeals are authorized for NJP proceedings beyond the initial Appellate Authority.

3-20. Records disposition. Records disposition will be done in accordance with applicable FLANG and AF Regs.

Figure 3-6 – AF 3070 – Record of Nonjudicial Punishment Proceedings (Page 1 of 3)

<b>RECORD OF NONJUDICIAL PUNISHMENT PROCEEDINGS</b>			
TO (Name, Rank, Organization, SSN, and Major Command of Service Member)			ATCH(S)
<p><b>1. Offer of Nonjudicial Punishment.</b></p> <p>a. (Commander initials one block):</p> <p>(1) <input type="checkbox"/> I am considering whether I should punish you under Article 15, Uniform Code of Military Justice (UCMJ).</p> <p>(2) <input type="checkbox"/> I am considering whether I should recommend that _____ punish you under Article 15, UCMJ (See Note 1).</p> <p>b. Your alleged misconduct is in violation of the punitive Article(s) of the UCMJ as listed in item 14.</p> <p>c. You have the rights listed on Page 2 under "Rights of Member," including the right to consult a lawyer before making any decision, and to have a lawyer assist you throughout the proceedings. You may contact a military defense counsel at _____, telephone number _____.</p> <p>d. If you accept nonjudicial punishment proceedings and are found to have committed one or more of the offenses alleged, the maximum punishment the commander taking action may impose on you is listed on Page 3.</p> <p>e. You will notify me of your decision by _____ (Time), _____ (Date) unless I grant you an extension of time (See Note 2).</p>			
NAME/RANK/ORGANIZATION OF COMMANDER		SIGNATURE	DATE
<p><b>2. Service.</b></p>			
NAME/RANK/ORGANIZATION PERSON SERVING MEMBER (See Note 3)		SIGNATURE	TIME SERVED DATE SERVED
<p><b>3. Member's Acknowledgement and Elections.</b> I understand the rights listed on Page 2 of this form and acknowledge the recoupment statement in item 14. (Member initials one block on each line):</p> <p>a. <input type="checkbox"/> I have consulted a lawyer. <input type="checkbox"/> I have not consulted a lawyer.</p> <p>b. <input type="checkbox"/> I waive my right to court-martial and accept nonjudicial punishment proceedings. <input type="checkbox"/> I demand trial by court-martial in lieu of nonjudicial punishment.</p> <p>c. <input type="checkbox"/> I have attached a written presentation. <input type="checkbox"/> I have not attached a written presentation.</p> <p>d. <input type="checkbox"/> I request a personal appearance before you and that it not be public. <input type="checkbox"/> I request a personal appearance before _____ and that it be public. <input type="checkbox"/> I do not request a personal appearance before you.</p>			
NAME/RANK OF SERVICE MEMBER		SIGNATURE	TIME DATE
<p><b>4. Commander's Decision.</b></p> <p>a. I have considered the evidence, including any matters you have presented, and find that: (Commander initials one block)</p> <p>(1) <input type="checkbox"/> Nonjudicial punishment is not appropriate or you did not commit the offense(s) alleged. I hereby terminate these proceedings.</p> <p>(2) <input type="checkbox"/> You committed one or more of the offenses alleged. I lined out and initialed the offense(s), if any, for which I determined nonjudicial punishment is not appropriate or which you did not commit. I hereby impose punishment as listed in item 14.</p> <p>b. Reductions in grade, forfeitures in pay, and suspensions of any punishment are effective immediately. All other punishments take effect when you are notified of the punishment, unless otherwise stated.</p> <p>c. You must notify me by _____ (Time), _____ (Date) whether you appeal, unless I grant you an extension of time. You are entitled to advice of counsel in making this decision. You must notify me of your appeal decision and submit any matters you wish considered within the time provided or your right to appeal is waived. Any documents supporting your appeal must be submitted at the same time you make your appeal decision. A decision not to appeal is final. (See Note 4)</p>			
NAME/RANK/ORGANIZATION OF COMMANDER (See Note 5)		SIGNATURE	DATE
<p><b>5. Member's Acknowledgement.</b> I acknowledge receipt of the punishment and my right to appeal.</p>			
NAME/RANK OF SERVICE MEMBER		SIGNATURE	TIME DATE
<p><b>6. Member's Appeal Decision (member initials only one block).</b> Member's decision ends the time limit to appeal.</p> <p>a. <input type="checkbox"/> I do not appeal.</p> <p>b. <input type="checkbox"/> I appeal and submit matters in writing.</p> <p>c. <input type="checkbox"/> I appeal and do not submit matters in writing.</p>			
NAME/RANK OF SERVICE MEMBER		SIGNATURE	TIME DATE

AF 3070 – Record of Nonjudicial Punishment Proceedings (Page 2 of 3)

<p><b>7. Commander Action on Appeal</b> (<i>commander initials one block</i>). After considering all matters presented in your appeal, I hereby <input type="checkbox"/> deny your appeal. <input type="checkbox"/> grant your appeal, as shown in item 14. (<i>See Note 6</i>)</p>		
NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE
<p><b>8. Appellate Authority Action on Appeal</b> (<i>appellate authority initials one block</i>). After considering all matters presented in your appeal, I hereby <input type="checkbox"/> deny your appeal. <input type="checkbox"/> grant your appeal, as shown in item 14.</p>		
NAME/RANK/ORGANIZATION OF APPELLATE AUTHORITY	SIGNATURE	DATE
<p><b>9. Unfavorable Information File (UIF) Action.</b> (<i>Commander initials one block</i>). This action <input type="checkbox"/> will be filed in the Member?s UIF. <input type="checkbox"/> will not be filed in the Member?s UIF. (<i>See Note 7</i>)</p>		
NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE
<p><b>10. Member?s Acknowledgement.</b> I have been informed of the UIF decision. I have seen the action taken on any appeal.</p>		
NAME/RANK OF SERVICE MEMBER	SIGNATURE	DATE
<p><b>11. Servicing SJA Legal Review.</b> Record is legally sufficient and the action is final.</p>		
NAME/RANK/ORGANIZATION OF REVIEWING ATTORNEY	SIGNATURE	DATE
<p><b>12. MPF and AFO Distribution.</b> Copy received by MPF on _____ and AFO on _____. (Date/Initials) (Date/Initials)</p>		
<p><b>13. GCMCA SJA Administrative Supervisory Review.</b> Record is in compliance with AFI 51-202 and MCM, Part V.</p>		
NAME/RANK/ORGANIZATION OF REVIEWING ATTORNEY	SIGNATURE	DATE
<p><b>RIGHTS OF MEMBER</b></p>		
<p>1. You have all the rights specified in Article 15 of the Uniform Code of Military Justice (UCMJ), in Part V of the Manual for Courts-Martial (MCM) and in Air Force Instruction (AFI) 51-202, <i>Nonjudicial Punishment</i>. These rights are summarized below:</p> <ul style="list-style-type: none"> <li>a. You have the right to consult a lawyer before making any decisions, and a lawyer may assist you throughout the proceedings. A military defense counsel is available to advise you, free of charge, or you may retain civilian counsel at your own expense.</li> <li>b. You have the right (1) to accept nonjudicial proceedings under Article 15, UCMJ, in which case your commander (or the commander to whom this action is sent) will decide whether you committed the alleged offense, or (2) to demand trial by court-martial which requires proof of guilt beyond a reasonable doubt. You have 3 duty days to make this decision, unless you request an extension of time and the commander grants the extension. Your acceptance of nonjudicial punishment proceedings is not an admission that you committed the alleged misconduct. The commander will make that decision only after you present your evidence or statement in defense, if you choose to do so.</li> <li>c. If you demand trial by court-martial, charges could be referred for trial by summary, special or general court-martial. You have a right to be represented by counsel at a court-martial. You may not be tried by summary court-martial over your objection. You have additional rights at a trial by court-martial which you should ask your lawyer to explain.</li> <li>d. You have the right to examine the evidence against you before you make any decisions. Your lawyer may assist you in making a statement and/or obtaining evidence in your defense, and for use in extenuation and mitigation.</li> <li>e. If you accept nonjudicial punishment proceedings, you have the right (1) to make a full oral and/or written presentation to the commander (or a designee, in some cases) who will decide your punishment, (2) to present witnesses who are reasonably available, and (3) to be accompanied by someone to speak on your behalf. You may request the proceeding be open or closed to the public, but the commander makes the decision.</li> <li>f. You do not have to make any oral or written statement regarding the offense(s) of which you are accused and any statement made may be used as evidence against you in a later proceeding. See Article 31b, UCMJ.</li> </ul> <p>2. If the commander imposes punishment, you have 5 calendar days to appeal to the next superior commander. You have the right to consult with a lawyer before deciding whether to appeal and to assist you in your appeal. In your appeal, you may present additional written matters.</p>		
<p><b>Note 1:</b> If a personal appearance is made to someone other than the commander who will impose punishment, that person sends, by separate indorsement, a summary of the appearance and copies of all documents presented, to the imposing commander.</p>		
<p><b>Note 2:</b> The date and time in item 1c must be a minimum of 3 duty days (including weekends and holidays if normally scheduled duty days for the member) from the date and time the member is notified in item 2.</p>		
<p><b>Note 3:</b> The initiating commander may direct a subordinate, senior to the member, when practicable, to notify and serve the member. The person serving the member, whether the commander or subordinate, signs and annotates the date and time of service.</p>		
<p><b>Note 4:</b> The date and time in item 4c must be a minimum of 5 calendar days from the date and time the member is notified in item 5.</p>		
<p><b>Note 5:</b> If a member is an officer or E-7 or above, see AFI 36-2608, <i>Military Personnel Records System</i> for further guidance concerning filing the Record of Nonjudicial Punishment in the appropriate selection record.</p>		
<p><b>Note 6:</b> If the imposing commander grants less than the full relief requested, the commander must forward the appeal to the appellate authority through the servicing Staff Judge Advocate. See AFI 51-202, paragraph 4.6, for further guidance.</p>		
<p><b>Note 7:</b> See AFI 36-2907, <i>Unfavorable Information File (UIF) Program</i>, for further guidance.</p>		
<p><b>Note 8:</b> A continuation page may be used if necessary. Identify the information by the item number</p>		



Figure 3-7 – AF 366 – Record of Proceedings of Vacation of Suspended Nonjudicial Punishment (FRONT)

<b>RECORD OF PROCEEDINGS OF VACATION OF SUSPENDED NONJUDICIAL PUNISHMENT</b>			
NAME, RANK, SSN, ORGANIZATION, AND MAJOR COMMAND OF SERVICE MEMBER			ATCH(S)
<b>1. Notice of Vacation Proceedings</b>			
<p>a. On _____ the nonjudicial punishment shown in item 9 was imposed on you under the provisions of Article 15, Uniform Code of Military Justice (UCMJ). This notice of vacation proceedings concerns the suspended portion of your nonjudicial punishment.</p> <p>b. I am considering whether to vacate some or all of the suspended nonjudicial punishment because you allegedly violated the condition(s) of your suspension as listed in item 9 <i>(See Note 1)</i>.</p> <p>c. You may present matters in defense, extenuation, or mitigation regarding the alleged violation(s) on which this vacation action is based. You may make a written presentation, a personal appearance, or both. If you elect to make a personal appearance, you may (1) personally appear before me (or my designee, in some cases), (2) present evidence, (3) present witnesses who are reasonably available, and (4) be accompanied by someone to speak on your behalf. You do not have to make any oral or written statement regarding any offense(s) of which you are accused and any statement made may be used against you in a later proceeding. A military defense counsel is available to further explain these rights to you. You may contact a military defense counsel at _____, telephone number _____.</p> <p>d. You will notify me of your elections in item 3 below and submit any matters you wish considered by _____ <i>(Hours)</i>, _____ <i>(Date)</i>, unless I grant you an extension of time. <i>(See Note 2)</i>. I will make my vacation decision only after considering the matters you present.</p>			
NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE	
<b>2. Service</b>			
NAME OF PERSON SERVING MEMBER <i>(See Note 3)</i>	SIGNATURE	TIME SERVED	DATE SERVED
<b>3. Member's Elections. <i>(Member initials one block on each line)</i></b>			
a. <input type="checkbox"/> I have consulted a lawyer. <input type="checkbox"/> I have not consulted a lawyer.			
b. <input type="checkbox"/> I have attached a written presentation. <input type="checkbox"/> I have not attached a written presentation.			
c. <input type="checkbox"/> I request a personal appearance before you. <input type="checkbox"/> I do not request a personal appearance before you.			
NAME/RANK OF SERVICE MEMBER	SIGNATURE	TIME	DATE
<b>4. Commander's Decision <i>(See Note 4)</i></b>			
<p>a. I have considered the evidence, including any matters you have presented, and find that: <i>(Commander initials one block)</i></p> <p>(1) <input type="checkbox"/> Vacation of the suspended punishment is not appropriate or you did not violate the condition(s) of your suspension. I hereby terminate these vacation proceedings.</p> <p>(2) <input type="checkbox"/> You violated one or more of the conditions of your suspension. I lined out and initialed the violations, if any, for which I determined vacation of the suspended punishment is not appropriate or which you did not violate. I hereby vacate the suspended punishment as listed in item 9.</p> <p>b. The vacation of the suspended nonjudicial punishment is effective immediately unless otherwise stated.</p>			
NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE	
<b>5. Member's Acknowledgement. I have seen the action taken on the proceedings of vacation of suspended nonjudicial punishment and I understand that there is no right to appeal this decision.</b>			
NAME/RANK OF SERVICE MEMBER	SIGNATURE	DATE	



Figure 3-8 – AF 3212 – Record of Supplementary Action Under Article 15, FCMJ

<b>RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, <sup>FCMJ</sup><del>UCMJ</del></b>		
NAME, RANK, SSN, ORGANIZATION, AND MAJOR COMMAND OF SERVICE MEMBER		
<b>1. Action (See Note).</b>		
<p>a. The service member identified above received nonjudicial punishment under Article 15, UCMJ, on _____ (date).</p> <p>b. (Commander initials one block):</p> <p>(1) <input type="checkbox"/> The entire nonjudicial punishment action is set aside. Any property, privileges, or rights affected by the punishment set aside are restored.</p> <p>(2) <input type="checkbox"/> All of the nonjudicial punishment is suspended and will be remitted without further action if not vacated before _____ (date).</p> <p>(3) <input type="checkbox"/> All of the nonjudicial punishment is mitigated to:</p> <p>(4) <input type="checkbox"/> That portion of the nonjudicial punishment which called for:</p> <p style="margin-left: 40px;">is (Commander initials one block if item 1.b.(4) is selected):</p> <p>(a) <input type="checkbox"/> Suspended and will be remitted without further action if not vacated before _____ (date).</p> <p>(b) <input type="checkbox"/> Remitted.</p> <p>(c) <input type="checkbox"/> Set aside. Any property, privileges, or rights affected by the portion of the punishment set aside are restored.</p> <p>(d) <input type="checkbox"/> Mitigated to:</p> <p>c. I am (initial one block): <input type="checkbox"/> the officer who imposed the punishment. <input type="checkbox"/> the successor in command to the officer who imposed the punishment. <input type="checkbox"/> Other (specify):</p>		
NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE
<b>2. Member's Acknowledgement.</b>		
I have seen the action taken above on my nonjudicial punishment.		
NAME/RANK OF SERVICE MEMBER	SIGNATURE	DATE
<b>3. Servicing SJA Legal Review. Record is legally sufficient and the action is final.</b>		
NAME/RANK/ORGANIZATION OF REVIEWING ATTORNEY	SIGNATURE	DATE
<b>4. MPF and AFO Distribution.</b> Copy received by MPF on _____ and AFO on _____ (Date/Initials) (Date/Initials)		
<b>5. GCMCA SJA Administrative Supervisory Review. Record is in compliance with AFI 51-202 and Part V, MCM.</b>		
NAME/RANK/ORGANIZATION OF REVIEWING ATTORNEY	SIGNATURE	DATE
<small>Note: If applicable, see AFI 36-2907, Unfavorable Information File (UIF) Program, for further guidance regarding UIF actions.</small>		

## CHAPTER 4

## COURT-MARTIAL PRETRIAL PROCEDURES AND OTHER GENERAL MATTERS

## 4-1. Preparation of formal charges.

a. Preparation of formal charges and specifications are not required if the matter is to be disposed of by NJP (see Chapter 3, above).

b. For all courts-martial, the preparation of formal charges and specifications is required and must be prepared by the command requesting the court-martial with the assistance of the legal specialist. Formal charges and specifications are promulgated by the completion of a Department of Defense Form (DD) 458 (Charge Sheet, Figure 4-1, Page 87). The DD 458 contains identifying information as to the accused, a formal accusation charging specific violations of the FCMJ sworn to by the "accuser", and an endorsement by the appropriate court-martial convening authority referring the charges to trial by court-martial. Completion of the DD 458 is outlined in Section 4-2, below. Instructions on the form and verbiage for alleging the charges and specifications for specific violations of the FCMJ are found in Appendix B, below. Consultation with a JA is **strongly** recommended in order to draft charges for any FCMJ Article other than Article 86. This procedure is to ensure conformity with the MCM elements of offenses.

c. The accuser signing the formal charges must be a member of the FLNG. The charges must be sworn to in accordance with R.C.M. 307. Charges may be sworn to before an Adjutant, Assistant Adjutant, JA, or SCM. Charges are forwarded through the COC of the officer exercising the appropriate court-martial jurisdiction over the command of which the accused is a member. If the officer preparing the formal charges is the officer exercising SCM or SPCM jurisdiction over the accused, he may forward the formal charges to the next higher court-martial jurisdiction with a request that the latter convene the court. If the commander of the accused requests trial by SPCM or GCM, the formal charges must be forwarded through the SCM and SPCM convening authority if each of those individuals is senior to the command of the accused. The SCM and SPCM convening authority may elect to disapprove the request for trial by SPCM or GCM and dispose of the charges as set forth in Chapter 3, above.

d. In forwarding charges, the following rules shall be observed:

(1) Informing the accused of charges. Before forwarding the charges, the immediate commander will inform the accused of the charges against him (Article 30(b), FCMJ) and complete and sign the certificate to that effect in block 12 of the DD 458. If the accused is unavailable, a report of this circumstance will be included in the letter forwarding the charges.

(2) Notice of refusal to accept NJP. The immediate commander shall forward the DA 2627 indicating the accused's rejection of NJP, along with the DD 458 and other pertinent documents.

(3) Minor offenses. When charges are submitted with a view toward trial by SCM or action under NJP, they need not be forwarded by a formal Letter of Transmittal, but should be accompanied by sufficient information to enable the commander receiving them to dispose of them without further investigation.

(4) Serious offenses. When charges are submitted with a view toward trial by SPCM or GCM, they will be forwarded by a Letter of Transmittal signed personally by the appropriate SCM or SPCM convening authority, containing the following information:

(A) Summary of the evidence expected from each witness or other source. The signature of each witness to the summary of his testimony will be obtained unless the procurement of the signatures will unduly delay the forwarding of the charges.

(B) Reasonably available documentary evidence and exhibits. If it is inadvisable to forward this evidence with the Letter of Transmittal, it should be properly marked, described, and referred to in the charges or in the Letter of Transmittal.

(C) Evidence of admissible previous convictions by court-martial, in the case of enlisted personnel, is usually in the form of an attested copy of the pertinent entries in the accused's personnel records, i.e., copy of DA 2-2 (Insert Sheet to DA Form 2-1, Record of Court-Martial Conviction) (Figure 4-2, Page 89).

(D) Explanation of any unusual features of the case, including such matters as the character of the accused's military service before the offenses charged and his record before entry into the military service, if known.

(E) Specific recommendations as to the disposition of the charges.

(5) A GCM action requires a formal investigation pursuant to Article 32, FCMJ, (see paragraph 7-3, above, for Article 32, FCMJ, Investigations).

(6) The referral of formal charges is NOT an irrevocable action. Should a commander wish to dispose of offenses with NJP after charges have been preferred, but before the trial is actually held, he may make a request, in writing, to the SCM convening authority that the preferred charges, or trial (if scheduled), be delayed pending action under Article 15, FCMJ.

e. Flagging action (**Army National Guard only**). When it appears that action may be initiated which could result in a court-martial, disciplinary action, or elimination proceedings, the commander must immediately initiate flagging action against the

Soldier pursuant to AR 600-8-2. Use of DA 268 (Report to Suspend Favorable Personnel Actions (FLAG)), (Figure 4-3, Page 90) is prescribed. This suspends all favorable personnel action. In no case will flagging action be used as a punitive or disciplinary measure. A completed DA 268 must accompany a referral of charges.

(1) If the charges are dropped, the accused is acquitted, or at such time that ALL punishment is completed, remitted, or set aside (including any probationary time), the suspension of favorable personnel action is to be terminated at that time.

(2) A suspension of favorable personnel action will continue for the entire period of the punishment and/or suspension of punishment/probation until the period of punishment is completed, or at the time the punishment is automatically remitted after an unvacated suspension.

#### 4-2. Completion of DD Form 458.

##### a. Section I. Personal data.

(1) Block 1 - Name of the accused in upper case (LAST, FIRST, MI);

(2) Block 2 - SSN of the accused;

(3) Block 3 - Grade or rank of the accused, i.e., PV1, PFC, SPC, etc;

(4) Block 4 - Pay grade of the accused, i.e., E-1, E-2, etc;

(5) Block 5 - Unit or organization to which the accused is assigned or attached (spell out using NO abbreviations, i.e., Company C, 2nd Battalion, 124th Infantry, 53rd Infantry Brigade, Florida Army National Guard;

(6) Block 6 - Current service of the accused;

(A) The initial date of the current contract DD Form 4, Enlistment Contract, DA 4836 (Oath of Extension of Enlistment or Reenlistment), or NGB Form 66, if applicable. For warrant and commissioned officers, this would be the date of their initial appointment in the FLNG; and

(B) The term of service of the contract (indefinite for officers).

(7) Block 7 - Pay per month of the accused;

(A) Basic pay of the period in which the offense was committed; i.e., Multiple Unit Training Assembly (MUTA), Split Unit Training Assembly (SUTA), AT, SAD, or

Active Guard/Reserve (AGR) Tour (if an Active Duty period exceeds one month, basic pay for one month is used); and

(B) Any special pay; i.e., flight, proficiency, etc.

(C) Total.

(8) Block 8 - Nature of restraint of accused; i.e., restricted to certain limits, pre-trial confinement, etc. This block is to be left blank until such time that some form of restraint is administered; and

(9) Block 9 - Dates imposed. This block is to be left blank until such time that some form of restraint is administered.

b. Section II. Charges and specifications. (Use Appendix B, below, for format.)

(1) Numbering of charges. No number is used if there is only one charge. Roman Numerals (I, II, III, IV, etc.) will be used for more than one charge;

(2) Strike out "~~UCMJ~~" and type "FCMJ" under it at the top of block 10;

(3) The FCMJ Article violated is to be typed after the word "Article" (86, 92, 134, etc.); and

(4) Numbering of specifications. No number is used if there is only one specification. Arabic Numerals (1, 2, etc.) will be used for more than one specification.

c. Section III. Preferral.

(1) Block 11 - This is data pertaining to the accuser. Although the accuser is normally the unit commander of the accused, unit 1SG and any warrant or commissioned officer may prefer charges.

(A) Block 11a - Type accuser's name in upper case (LAST, FIRST, MI);

(B) Block 11b - Grade of accuser;

(C) Block 11c - Organization of accuser (abbreviated);

(D) Block 11d - Signature of accuser; and

(E) Block 11e - Date charges were preferred.

(2) The accuser must be sworn by a commissioned officer, authorized to administer oaths, that the matters pertaining to the accusations have been investigated and found to be true to the best of the accuser's knowledge and belief. This is accomplished by administering the oath in the "AFFIDAVIT" (Part III, DD 458).

(3) Completion of the affidavit by the officer administering the oath:

- (A) The date the oath was administered;
- (B) Typed name of the officer in upper case (FIRST, MI, LAST);
- (C) Unit of the officer (abbreviated);
- (D) Grade of the officer (spelled out);
- (E) Position of the officer (spelled out); and
- (F) Signature of the officer.

(4) In block 12, the unit commander reports the notification of charges against the accused to the accused. This notification may be verbal or written, in person, or by mail via US Postal Service Priority Mail with Delivery Confirmation.

(A) Type the date the notification was made (either in person or the date it was mailed as indicated above);

- (B) Type the commander's name in upper case (FIRST, MI, LAST);
- (C) Unit of the commander (abbreviated);
- (D) Grade of the commander (spelled out); and
- (E) Signature of the commander.

(5) Special notes:

(A) If the commander is the accuser, the Affidavit must be completed at the next higher headquarters; and

(B) The commander may complete both the Affidavit and Notification sections.

d. Receipt by SCM convening authority. After the unit commander completes block 12, the DD 458 must be forwarded to the SCM convening authority.

(1) Upon arrival of the DD 458, the legal office will complete block 13 by typing in the time and date the charges were received and the headquarters designation (spelled out).

(2) Convening authority's data may be completed by a duly appointed representative, such as the Adjutant or the Assistant Adjutant.

(A) If the convening authority's representative signs, the word "COMMANDER" must be typed after "FOR THE";

(B) Type the name of the officer in upper case (FIRST, MI, LAST);

(C) The officer's official title (spelled out);

(D) The officer's Grade (spelled out); and

(E) The officer's signature.

e. Referral to trial. The convening authority will review the DD 458 and allied documents to make a determination as to the disposition. The convening authority may direct a SCM be convened. In cases involving serious offenses, the convening authority may refer the case to higher headquarters for disposition under a SPCM or GCM. In such cases, the DD 458 and allied documents shall be forwarded to the higher headquarters by cover letter. The higher headquarters shall then complete this portion of the DD 458.

(1) Block 14 - This is to be completed by the clerk after the convening authority indicates the type of court-martial to be convened. The clerk then types:

(A) Headquarters designation (abbreviated);

(B) Physical location (armory);

(C) Date of referral;

(D) Then complete the next sentence:

"Referred for trial to the (Summary, Special or General) court-martial convened by Court-Martial Convening Order Number \_\_\_\_\_, this Headquarters, dated \_\_\_\_\_, subject to the following instructions: \_\_\_\_\_ By Order of \_\_\_\_\_ (RANK, FIRST, MI, LAST NAME of the convening authority)."; and

(E) Convening authority, or representative, information:

- (i) Type name of officer in upper case (FIRST, MI, LAST);
- (ii) Officer's official title (spelled out);
- (iii) Officer's Grade (spelled out); and
- (iv) Officer's signature.

(2) Block 15 - This will be completed by the SCM, or trial counsel in the case of a SPCM/GCM.

(A) The date the copy of the DD 458 and FNG 611 (Notice of Trial by Court-Martial) (Figure 4-4, Page 91), are served to the accused will be entered;

(B) Type the officer's name in upper case (FIRST, MI, LAST);

(C) Type the officer's rank (spelled out); and

(D) Officer's signature.

#### 4-3. Who may convene a court-martial.

a. General Court-Martial. Under the FCMJ, as contained in the Florida Statutes, GCM in the FLNG may be convened by order of the President of the United States, the Governor, or TAG-FL as delegated by the Governor.

b. Special Court-Martial. The commanding officer of each garrison, fort, post, camp, air base, auxiliary air base, any other place where troops are on duty, division, brigade, group, regiment, battalion, wing, or squadron may convene a SPCM for his command; but such SPCM may be convened by superior commanders when advisable. The commanding officer of each MACOM/MAJCOM of the FLNG or his superior commander may convene a SPCM empowered to adjudicate a BCD from the service, subject to the procedural protections provided in Title 10, USC, Section 819.

c. Summary Court-Martial. The commanding officer of each battalion, higher headquarters, or similar type unit may convene a SCM for such place or command. Any person who may convene a GCM or SPCM may convene a SCM consisting of one commissioned officer. The proceedings shall be informal. The commander of a non-detached company may not convene a SCM, but rather must request that the court be convened by a higher authority.

#### 4-4. Convening a court-martial.

a. Convening orders are issued, naming members and details (Figure 4-5, Page 92).

b. Members of the court are usually selected from within the convening authority's command but may also be selected from outside the command. Orders are prepared by the appropriate convening authority directing members, detailing legal counsel and the military judge in the Convening Order to duty on the court. This must be coordinated with the SJA for that command.

c. The convening authority shall remain absolutely neutral with the court and avoid any influence, censorship, coercion or other effort to influence the court or criticize the outcome.

d. If a military judge is appointed, he will be certified by TAG-FL in accordance with the requirements set forth in Florida Statutes. The military judge will follow procedures in the MCM or the procedures outlined in the *Military Judge's Benchbook*.

e. A military judge will be appointed for all SPCM and GCM proceedings.

f. All GCMs and SPCMs (empowered to adjudge a BCD) must be recorded verbatim as required by R.C.M. 1103. Special Courts-Martial (non-BDC) and SCM proceedings need not be recorded verbatim.

(1) In SPCM proceedings where verbatim transcripts are not required a summarized report of the proceedings may be prepared instead of a verbatim transcript.

(2) In SCM proceedings, the SCM will provide a written synopsis of the testimony, findings of fact, and reason for a given sentence when the accused enters a plea of "Not Guilty" and the finding is "Guilty", however, these documents are not required when the finding is "Not Guilty".

(3) The expenses of court-martial proceedings, including the payment of court reporters, shall be in accordance with Chapter 250, Fla. Stat.

g. Summary Courts-Martial will be conducted in accordance with Chapter 5, below; SPCMs in accordance with Chapter 6, below; and GCMs in accordance with Chapter 7, below.

4-5. Discovery. In any court-martial proceeding, all discovery shall be conducted in accordance with R.C.M 701 and 702.

#### 4-6. Securing the presence of the accused at court-martial.

a. The accused shall be issued written orders, FNG 611, together with a copy of the DD 458, to appear at a specific time and place for the pending proceeding such as arraignment, pre-trial conference, court-martial, etc.

(1) As noted in paragraph 4-10, below, the preferral of charges starts the "speedy trial" period wherein the accused must be tried with 120 days.

(2) The 120-day period does not provide for any additional time for service by mail.

(3) Unless this right to speedy trial is waived by an accused, a failure to bring the accused to trial within the 120-day period may result in the dismissal of all charges.

b. The order must be delivered personally to the accused, wherever he may be found, or mailed to the accused's last known address, via US Postal Service Priority Mail with Delivery Confirmation service.

c. If the accused fails to appear as ordered, he may be placed in pre-trial confinement by order of TAG-FL or his designee, or a military judge. Pre-trial confinement shall be in the county jail of the county in which the accused lives.

d. To effect pre-trial confinement, TAG-FL, his designee, or a military judge, shall, after establishing that the provisions of paragraph 4-6b, above, are met, have a pre-trial confinement warrant executed. An FNG 636 (Fact Sheet) (Figure 4-6, Page 93), completed by the accused's unit, will accompany the Pre-Trial Confinement Warrant.

e. Upon execution, the pre-trial confinement warrant and an FNG 636 will then be returned to the unit for delivery to the appropriate sheriff's office.

f. The accused shall remain in pre-trial confinement for a period not to exceed 48 hours, or until the conclusion of the court-martial, whichever event occurs first, unless otherwise released by proper authority. The 48 hour limit may be extended only by TAG-FL or a military judge for up to an additional 15 days. For purposes of this subsection, military judge does not include a SCM Officer unless he is qualified to act as a military judge in a GCM or SPCM.

g. In addition to pre-trial confinement, if an accused fails to follow orders to appear for court-martial this may also form the basis for additional court-martial charges for failure to obey a lawful order under Article 92, FCMJ.

h. Should the accused not be located after a period of 180 days from preferral of charges, when all reasonable and ordinary means, and the Florida Crimes Information

Center (FCIC), has been utilized, it is recommended that the commander initiate administrative discharge proceedings. Upon notification of administrative discharge by the commander, or at the conclusion of 180 days, whichever occurs first, the OSJA, JFHQ-FL will notify the appropriate sheriff's office, in writing, that the warrant has been withdrawn.

#### 4-7. Trial of an accused not present for the proceedings.

a. An accused who fails to appear for court-martial cannot be tried if not present at the proceedings.

b. An accused who intentionally absents himself from the proceedings after arraignment on the charges may be tried if not present for the proceedings; however, every effort should be made to determine the cause of the absence and to secure his presence at trial. Proceedings conducted without the accused present, when the absence is of no fault of his own, are invalid.

#### 4-8. Securing the presence of witnesses at court-martial.

a. Florida National Guard witnesses:

(1) When in a duty status on the date of the deposition or trial, members of the FLNG shall be ordered (verbally or written) to attend the deposition or trial. If not in a duty status, members shall be summoned as witnesses by FNG 603 (Subpoena) (Figure 4-7, Page 94).

(2) Subpoenas shall be issued by TAG-FL, his designee, or a military judge and may be directed to the sheriff of any county for service. Normally, the subpoena will be served by the sheriff of the county in which the witness resides. Subpoenas may be enforced by TAG-FL, his designee, or a military judge, as per Section 250.36(3), Fla. Stat.

(3) Subpoenas may only be issued for persons residing within the State of Florida.

b. Sanctions for a witness' failure to appear. Any member that fails to appear after having received a written or verbal order to appear for a trial or deposition may be punished for violating a lawful order under Article 92, FCMJ.

4-9. Fees and costs. All fees and costs for conducting military justice proceedings shall be as provided in Section 250.37, Fla. Stat.

## 4-10. Speedy trial rule.

a. Per R.C.M. 707, an accused shall be brought to trial within 120 days after notice of preferral of charges, or the imposition of restraint, whichever is earlier. This 120-day rule applies to all trials, regardless of the level of the court or the type of restraint. Failure to bring an accused to trial within a reasonable period of time may constitute a denial of the right to a speedy trial, which may result in a dismissal of the charges.

b. Not all types of restraints, such as "conditions on liberty," start the 120-day time period. Nevertheless, the convening authority must be mindful of the "preferral date" and of any "restraint date" and it is the convening authority's responsibility to inform trial counsel or the SCM and the unit commander of that date.

c. The 120-day period includes the day of the trial but does not count the initial date of restraint or notice of preferral. Normally, delays do not toll the speedy trial period. However, delays caused by, requested by, or consented to, by the defense will toll the speedy trial requirement. The speedy trial rule may be waived altogether by the defense.

## 4-11. Arraignment and pleas.

a. Arraignment shall be conducted in a court-martial session and shall consist of reading the charges and specifications to the accused and calling on the accused to plead. The accused may waive the reading.

b. An accused may plead as follows: guilty; not guilty to an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or, not guilty.

c. Before accepting a plea of guilty the military judge shall address the accused personally and inform him of, and determine that, the accused understands the following:

(1) The nature of the offense to which the plea is offered and the minimum and maximum penalties, if any, provided by law;

(2) In a GCM or SPCM if the accused is not represented by counsel, that the accused has the right to be represented by counsel;

(3) That the accused has the right to plea not guilty and that the accused has the right to be tried by a court-martial, and that at such trial he has the right to confront and cross examine witnesses against him, and the right against self-incrimination;

(4) That if the accused pleads guilty, there will not be a trial of any kind as to those offenses to which the accused has so pleaded, so that by pleading guilty he waives the rights described in paragraph 4-11c(3), above; and

(5) That if the accused pleads guilty the military judge will question the accused about the offenses to which the accused has pleaded guilty and, if the accused answers these questions under oath, on the record, and in the presence of counsel, the accused's answers may later be used against him in a prosecution for perjury or false statement.

d. A military judge shall also ensure that the plea of guilty is voluntary and not the result of force or threats or of promises apart from a plea agreement, if any.

e. A military judge shall not accept a plea of guilty without making inquiry of the accused, under oath, as shall satisfy the military judge that there is a factual basis for the plea.

f. In the event that the accused's guilty plea is pursuant to a plea agreement the military judge shall comply with the inquiry requirements of R.C.M. 910(f).

g. Findings based on a plea of guilty may be entered immediately upon acceptance of the plea unless the plea is to a lesser included offense and the prosecution intends to proceed to trial on the offense as charged.

h. If a plea of not guilty is entered the case may proceed to court-martial.

4-12. Conduct of trial. The conducting of SCM, SPCM, and GCM proceedings shall be in accordance with Chapters 5, 6, and 7 of this Regulation, Chapter 250, Fla. Stat., and the applicable portions of the MCM.

4-13. Contempt of court proceedings.

a. Contempt of court is any act of disorderly, contemptuous, or indecorous language or expression to, or before, any military court, or any member of such court, in open court, tending to interrupt its proceedings, or to impair the respect due its authority.

(1) Contempt can be punished by the court by confinement in the county jail in the county where the court sits, not to exceed 30 days in county jail, or up to a \$100.00 fine, per offense. (See Section 250.39, Fla. Stat.)

(2) A SCM who is not qualified to act as a military judge in a GCM or SPCM may conduct the contempt hearing and adjudicate a fine, but may not issue a warrant for confinement. (See Section 250.39, Fla. Stat.)

b. All orders of confinement for contempt of court will be reviewed and approved by TAG-FL, or his designee, prior to execution of the sentence.

c. Proceedings for contempt citations.

(1) The court shall issue an FNG 612 (Rule to Show Cause) (Figure 4-8, Page 95), directing the offending party to appear before the court on a specified date and time to show cause why he should not be held in contempt for the alleged contemptuous action. The FNG 612 shall then be served by the sheriff.

(2) The formality to show cause is not required if the contemptuous action is expressed in open court in the presence of the court. In this case, the court is authorized to summarily handle the contemptuous action without a formal hearing.

(3) The SCM, president of a SPCM or GCM, or military judge, if detailed, is the person authorized to issue an FNG 612, to determine if a person is in contempt of court, and impose sentence.

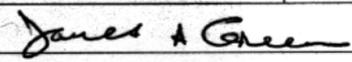
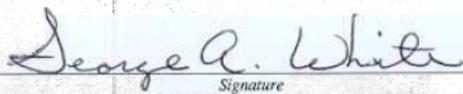
(4) Once the offender appears before the court, if the court decides good cause was not shown, the FNG 612, and request for three days confinement, will be forwarded to TAG-FL, ATTN: SJA, for approval and issuance of a warrant.

4-14. Post-trial matters. The conducting of SCM, SPCM, and GCM post-trial proceedings shall be in accordance with Chapters 5, 6, 7, and 8 of this Regulation, Chapter 250, Fla. Stat., and the applicable portions of the MCM.

4-15. Appellate review. Appeals of any SCM, SPCM or GCM proceedings will be conducted in accordance with Chapter 9 of this Regulation and Section 250.35, Fla. Stat.

LEFT BLANK INTENTIONALLY

Figure 4-1 – DD 458 – Charge Sheet (FRONT)

CHARGE SHEET				
<b>I. PERSONAL DATA</b>				
1. NAME OF ACCUSED <i>(Last, First, MI)</i> DOE, JOHN A.		2. SSN 987-65-4321	3. GRADE OR RANK SGT	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION HHC, 2-124 INF BN Orlando, FL			6. CURRENT SERVICE	
			a. INITIAL DATE 15 Jan 02	b. TERM 6 yrs
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	None	
2,124.60		2,124.60	9. DATE(S) IMPOSED N/A	
<b>II. CHARGES AND SPECIFICATIONS</b>				
10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 86 ABSENT WITHOUT LEAVE FCMJ SPECIFICATION: In that SGT John A. Doe, FLARNG, did, on or about June 1, 2006, without authority and with intent to avoid Annual Training, absent himself from his unit, to wit: HHC, 2-124 INF BN located at Camp Blanding Joint Training Center, Florida, and did remain so absent until on or about June 14, 2006.  CHARGE II: FAILURE TO OBEY ORDER OR REGULATION, VIOLATION OF THE FCMJ, ART. 92 The Specification: In that SGT John A. Doe, FLARNG, having knowledge of a lawful order issued by CPT Grey, to attend Annual Training, an order which it was his duty to obey, did, on or about June 1, 2006, fail to obey the same by failing to attend Annual Training 06.				
<b>III. PREFERRAL</b>				
11a. NAME OF ACCUSER <i>(Last, First, MI)</i> Green, James A		b. GRADE 1SG	c. ORGANIZATION OF ACCUSER HHC, 2-124 INF BN	
d. SIGNATURE OF ACCUSER 			e. DATE 20 June 2006	
<p>AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>20</u> day of <u>June</u>, 2006, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p>				
George A. White <i>Typed Name of Officer</i>		HHC, 2-124 INF BN <i>Organization of Officer</i>		
1st Lieutenant <i>Grade</i>		Adjutant <i>Official Capacity to Administer Oath</i> <i>(See R.C.M. 307(b) - must be commissioned officer)</i>		
 <i>Signature</i>				

DD 458 – Charge Sheet (BACK)

12. On 23 June, 2006, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

Jack A. Grey HHC, 2-124 INF BN  
*Typed Name of Immediate Commander* *Organization of Immediate Commander*

Captain  
*Grade*

*Jack A. Grey*  
*Signature*

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1505 hours, 25 June 2006 at HQ, 2-124 INF BN  
*Designation of Command or*

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE <sup>1</sup> COMMANDER

Joseph A. Black Executive Officer  
*Typed Name of Officer* *Official Capacity of Officer Signing*

Captain  
*Grade*

*Joseph A. Black*  
*Signature*

V. REFERRAL: SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY 2-124 Infantry Battalion	b. PLACE Orlando, FL	c. DATE 2 July 2006
--	-------------------------	------------------------

Referred for trial to the Summary court-martial convened by SCMCO 3, dated

5 January 2006, subject to the following instructions:<sup>2</sup> None

By \_\_\_\_\_ of \_\_\_\_\_

*Command or Order*

John A. Smith Commander, 2-124 INF BN  
*Typed Name of Officer* *Official Capacity of Officer Signing*

Lieutenant Colonel  
*Grade*

*John A. Smith*  
*Signature*

15. On 7 July, 2006, I (caused to be) served a copy hereof on (each of) the above named accused.

Mary A. Jones Major  
*Typed Name of Trial Counsel* *Grade or Rank of Trial Counsel*

*Mary A. Jones*  
*Signature*

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.  
 2 - See R.C.M. 601(e) concerning instructions. If none, so state.

Figure 4-2 – DA 2-2 – Insert Sheet to DA Form 2-1, Record of Court-Martial Conviction

INSERT SHEET TO DA FORM 2-1 RECORD OF COURT-MARTIAL CONVICTION		
For use of this form, see AR 60-2-1, the proponent agency/ is the office of T.JAG.		
NAME (Last, first, middle initial) AND SOCIAL SECURITY NUMBER	a. NUMBER	c. ARTICLE
<b>RILEY MICHAEL DAVID</b> <b>012345678</b>	<b>012345678</b>	<b>86</b>
<b>1. TYPE OF COURT MARTIAL Summary</b>	<b>b. HEADQUARTERS</b> 2d Battalion, 124th Infantry Regiment, 53rd Infantry Brigade (Separate)	
<b>2. SYNOPSIS OF SPECIFICATION AND DATE OF OFFENSE</b> AWOL 4 Mar 06, AWOL 24 March 06, and AWOL 31 March 06		
<b>3a. SENTENCE AS APPROVED, INCLUDING DATE ADJUDGED AND DATE APPROVED (after insertion, complete certification)</b> Reduction in Grade to SPC/E4, Fined \$200.00		<b>3b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)  RICHARD J GALLABY, COL HQ, 53rd Infantry Brigade (Sep)
<b>Adjudged:</b> 4/15/2006 <b>Approved:</b> 4/18/2006		<b>4b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>4a. ACTION ON SUPERVISORY OR APPELLATE REVIEW, INCLUDING HEADQUARTERS AND DATE</b> (after insertion, complete certification)		<b>5b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>Approved:</b>		<b>6b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>5a. MODIFICATION, SUSPENSION, OR SETTING ASIDE OF TRIAL RESULTS</b> (insert action taken, headquarters and date) (after insertion, complete certification)		
<b>Approved:</b>		
<b>6a. SUSPENDED SENTENCE VACATED</b> (insert headquarters and date) (insert action taken, headquarters and date)		
<b>Approved:</b>		
<b>1. TYPE OF COURT MARTIAL</b>	<b>a. NUMBER</b>	<b>c. ARTICLE</b>
<b>2. SYNOPSIS OF SPECIFICATION AND DATE OF OFFENSE</b>	<b>b. HEADQUARTERS</b>	
<b>3a. SENTENCE AS APPROVED, INCLUDING DATE ADJUDGED AND DATE APPROVED (after insertion, complete certification)</b>		<b>3b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>4a. ACTION ON SUPERVISORY OR APPELLATE REVIEW, INCLUDING HEADQUARTERS AND DATE</b> (after insertion, complete certification)		<b>4b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>5a. MODIFICATION, SUSPENSION, OR SETTING ASIDE OF TRIAL RESULTS</b> (insert action taken, headquarters and date) (after insertion, complete certification)		<b>5b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>6a. SUSPENDED SENTENCE VACATED</b> (insert headquarters and date) (insert action taken, headquarters and date)		<b>6b. I CERTIFY THAT THE FOREGOING IS CORRECT</b> (Signature and typed name, grade, and organization)
<b>DA FORM 2-2, NOV 74</b>		
REPLACES DA FORM 209, 1 JAN 65, WHICH IS OBSOLETE		
USAFPC V1 00		

Figure 4-3 – DA 268 – Report to Suspend Favorable Personnel Actions (FLAG)

<b>REPORT TO SUSPEND FAVORABLE PERSONNEL ACTIONS (FLAG)</b> <small>For use of this form, see AR 600-8-2; the proponent agency is MILPERCEN.</small>		
SECTION I - ADMINISTRATIVE DATA		
1. NAME <i>(Last, First, MI)</i> <b>DOE, JOHN J.</b>	2. SSN <b>987-65-4321</b>	3. RANK <b>SPC</b>
4. <input type="checkbox"/> On active duty <input checked="" type="checkbox"/> Not on active duty <input type="checkbox"/> On ADT	5. ETS/ESA/MRD <b>8 AUG 08</b>	
6. UNIT ASSIGNED AND ARMY MAJOR COMMAND <b>Co C, 1/124th Inf Bde (Sep)</b>		7. STATION <i>(Geographical location)</i> <b>Orlando, Florida</b>
8. PSC CONTROLLING FLAGGING ACTION AND TELEPHONE NUMBER <b>CPT Jonathan D. Johnson, 407/264-5654</b>		
9. THIS ACTION IS TO: <input checked="" type="checkbox"/> Initiate a flag <i>(Sections II and V only)</i> <input type="checkbox"/> Transfer a flag <i>(Sections III and V only)</i> <input type="checkbox"/> Remove flag <i>(Sections IV and V only)</i>		
SECTION II - INITIATE A FLAG		
10. <input checked="" type="checkbox"/> A FLAG IS INITIATED, EFFECTIVE <u>23 Feb 06</u> FOR THE FOLLOWING REASON:		
<b>NON-TRANSFERABLE</b> <input checked="" type="checkbox"/> Adverse action (A) <input type="checkbox"/> Elimination - field initiated (B) <input type="checkbox"/> Removal from selection list - field initiated (C) <input type="checkbox"/> Referred OER (D) <input type="checkbox"/> Security violation (E) <input type="checkbox"/> HQDA use only - elimination or removal from selection list (F)		<b>TRANSFERABLE</b> <input type="checkbox"/> APFT failure (J) <input type="checkbox"/> Weight control program (K)
SECTION III - TRANSFER A FLAG		
11. <input type="checkbox"/> A FLAG IS TRANSFERED FOR THE FOLLOWING REASON:		
<input type="checkbox"/> Adverse action - HQDA directed reassignment (G) <input type="checkbox"/> Adverse action - punishment phase (H) <input type="checkbox"/> Supporting documents attached? <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> APFT failure (J) <input type="checkbox"/> Weight control program (K)
SECTION IV - REMOVE A FLAG		
12. <input type="checkbox"/> A FLAG IS REMOVED, EFFECTIVE _____ FOR THE FOLLOWING REASON:		
<input type="checkbox"/> Case closed favorably (C) <input type="checkbox"/> Disciplinary action taken (D)		<input type="checkbox"/> Soldier transferred to a different Army component or discharged while case in process <i>(destroy case file)</i> (E) <input type="checkbox"/> Other final action (E)
SECTION V - AUTHENTICATION		
DISTRIBUTION 1 - Unit Commander                      1 - F&AO 1 - PSC    1 - Commander, gaining unit <i>(transfer flag only)</i>		
NAME, RANK, TITLE, AND ORGANIZATION <b>Jonathan H. Johnson, Commander, Co C, 1/124th Inf</b>	SIGNATURE	DATE <b>23 Feb 06</b>

Figure 4-4 – FNG 611 – Notice of Trial by Court-Martial

NOTICE OF TRIAL BY COURT-MARTIAL

TO: SPC John J. Doe  
3456 East 78<sup>th</sup> Avenue  
Orlando, FL 34567

You are hereby notified that charges and specifications, of which a copy is attached, have been duly referred for trial to a Summary Court-Martial convened by Court-Martial Convening Order No. 5, dated 21 January 2006 and that said Court will meet at the Orlando National Guard Armory, located at 98 Elm Street, Room 123, Orlando, FL, on the 15<sup>th</sup> day of June 2006, at 10 o'clock a.m. to proceed with your trial on said charges, and you are required then and there to appear in person before said Court.

Dated the 10<sup>th</sup> day of June, 2006.

*James R. White*  
JAMES R. WHITE  
MAJ, IN, FLARNG  
Summary Court-Martial Officer

Figure 4-5 – Sample Summary Court-Martial Convening Order

SUMMARY COURT-MARTIAL CONVENING ORDER  
Headquarters, 2/124<sup>th</sup> Inf Bde

COURT-MARTIAL CONVENING ORDER  
NUMBER 2

20 August 2005

A Summary Court-Martial is hereby convened. It may proceed at the Orlando National Guard Armory to try such persons as may properly be brought before it. Effective this date MAJ James R. White is detailed as a Summary Court-Martial Officer. Said Summary Court-Martial shall act in this capacity until relieved by this command.

*George S. Patton*

---

George S. Patton  
LTC, IN, FLARNG  
Commander, Hqs, 124<sup>th</sup> Inf  
Summary Court-Martial Convening Authority

Figure 4-6 – FNG 636 – Fact Sheet

FACT SHEET  
To Accompany Pre-Trial Confinement/Confinement Warrant

NAME: John N. Doe DOB: 3/6/85

RANK: PFC SSN: 012-34-5678 UNIT: Co C, 2/124<sup>th</sup> Inf

DESCRIPTION: HEIGHT: 5'9 WEIGHT: 165  
COLOR HAIR: Blonde COLOR EYES: Blue  
RACE: Caucasian

DISTINGUISHING SCARS, TATTOOS, AND OTHER "I Love Mom" tattoo on right thigh

LAST KNOWN ADDRESS: (Street) 1313 Mockingbird Lane  
(City) Orlando (County) Orange  
(State) Florida (Zip Code) 33614

\*\*\*\*\*  
PICTURE ATTACHED (YES) \_\_\_\_\_ (NO) X  
\*\*\*\*\*

PROCEDURE UPON APPREHENSION FOR PRE-TRIAL CONFINEMENT OR CONFINEMENT \* Individual will not be held in confinement for more \*  
\* than 48 hours or as directed by the Adjutant \*  
\* General, or his/her designee \*  
\*\*\*\*\*

County Sheriff's Office of Orange County should contact one of the following individual's (in order) upon the apprehension and confinement of subject individual in the Orange County Jail:

- 1. Senior Technician: Name: Steve Johnson Rank: SFC  
Address: 2627 Highpark Lane  
Phone #s: Work: 407/263-1515 Home: 407/555-1212
- 2. Unit Commander: Name: Harold Jordan Rank: LTC  
Address: 555 Robins Egg Lane  
Phone #s: Work: 407/263-1515 Home: 407/555-2121

County Sheriff's Office of Orange County will be notified of the time and date of the Summary Court-Martial by one of the above listed individuals at the time of contact, or within four hours. Immediately upon completion of the Summary Court-Martial the individual will then be released from custody/confinement.

Figure 4-7 – FNG 603 – Subpoena

SUBPOENA

Summary Court-Martial of the Florida Army National Guard, HQ, 124<sup>th</sup> INF BN

TO: PFC Jack B. Jones

You are hereby summoned and required to appear on the 8<sup>th</sup> day of October, 2006, at 6:00 o'clock p.m. before a Summary Court-Martial of the Florida National Guard at the Orlando National Guard Armory pursuant to Court-Martial Convening Order No. 5 of HQ, 2/124th INF BN, dated 15 Jan 06, to testify as a witness for the prosecution in the case of the Florida National Guard vs. SPC Harley Davidson.

Failure to appear is punishable as contempt by imprisonment (see Section 250.39, Florida Statutes).

Subscribed at the Orlando National Guard Armory this 3<sup>rd</sup> day of October, 2006.

*James R. White*  
JAMES R. WHITE  
MAJ, IN, FLARNG  
Summary Court-Martial Officer

Received this Subpoena on the \_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_, and executed the same on the \_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_, by personal delivery of a true and correct copy of the foregoing Subpoena to \_\_\_\_\_.

Sheriff, \_\_\_\_\_ County, Florida

BY: \_\_\_\_\_  
Deputy Sheriff

Figure 4-8 – FNG 612 – Rule to Show Cause

RULE TO SHOW CAUSE

PFC Jack J. Green is hereby directed to appear before the undersigned at 6:00 o'clock p.m., on 10 Oct 06, at the Orlando National Guard Armory to show cause why you should not be held in Contempt of Court for alleged conduct as follows:

Failure to appear as a witness for the Prosecution in the Summary Court-Martial Trial of SPC Joseph P. Doe.

*James R. White*  
JAMES R. WHITE, MAJ, IN, FLARNG  
Summary Court-Martial Officer

Received this Rule to Show Cause on the \_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_, and executed the same on the \_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_, by personal delivery of a true and correct copy of the foregoing Rule to Show Cause to \_\_\_\_\_.

Sheriff, \_\_\_\_\_ County, Florida

By \_\_\_\_\_  
Deputy Sheriff

LEFT BLANK INTENTIONALLY

CHAPTER 5  
SUMMARY COURTS-MARTIAL

5-1. General. A SCM shall be used to try enlisted personnel only for offenses that cannot or should not be redressed by NJP, and to try enlisted personnel who refuse to accept NJP. (See Section 250.35(2), Fla. Stat.) A SCM is an informal proceeding in which a commissioned officer, normally a non-lawyer, is detailed to hear the case; make findings of guilt or innocence; and impose punishment. Neither trial counsel (prosecutor) nor defense counsel are detailed; however, the accused does have the right to discuss the case with a military defense counsel and to retain civilian counsel at his own expense. The SCM may permit participation by civilian counsel; however, the SCM may prohibit or limit participation by civilian counsel if it is deemed that it would cause an unnecessary delay. The accused may, for any reason, reject trial by SCM, in which case the matter may be referred to trial by SPCM or GCM.

5-2. Maximum punishments. The following are the maximum punishments that may be imposed by a SCM:

- a. Verbal or written reprimand;
- b. Fine up to \$200.00 per offense;
- c. Confinement in a county jail for a period of time not to exceed 25 days;
- d. Forfeiture of all pay and allowances for 25 days/UTAs; and/or
- e. Reduction by one enlisted grade of a member who the convening authority had the authority to promote to their present grade.
- f. NOTE: Any combination of 5-2a through 5-2e, above, except that a fine AND confinement may not be adjudged together. These are maximum punishments and the SCM is not required to impose the maximum punishment but has the discretion to fashion the appropriate punishment for the situation not to exceed the maximum.

5-3. Pretrial matters.

- a. When a commander has knowledge that an offense under the FCMJ may have been committed, and after having the incident investigated further determines that the alleged offense is serious enough to warrant judicial action; or when an enlisted member refuses NJP, a commander may have a DD 458 prepared and initiate court-martial proceedings in accordance with Chapter 4, above.
- b. The commander must inform the accused of the nature of the offense, the accuser, and the charges being brought against the accused. The 120-day speedy trial

period begins the day the commander serves a copy of the DD 458 on the accused (Block 12 of DD 458). The accused must be allowed at least 15 days from the date he was notified, in writing, by US Postal Service Priority Mail with Delivery Confirmation, or by personal service, to consult with legal counsel prior to appearing before a hearing.

(1) Informing the accused of the charges may be accomplished either verbally or in writing. Sending a copy of Page 1 of the DD 458 is sufficient notice. Mailed notices should be sent via US Postal Service Priority Mail with Delivery Confirmation.

(2) Once the accused has been informed of the charges, block 12 of the DD 458 must be completed by the commander. For written notices, the postmark is the day notice was given. This date normally starts the speedy trial period. (See paragraph 4-10, above.)

c. If the convening authority authorizes a SCM, an officer to conduct the SCM will be detailed on orders.

d. Detailing a SCM. Convening authorities may detail any commissioned officer to serve as a SCM. Care should be taken in the selection process to ensure the maturity and experience of the officer considered. Normally, a Field Grade Officer or senior Captain should serve as a SCM.

e. Prior to the trial the SCM must serve, or cause to be served, on the accused, a copy of the completed DD 458, either personally or by mail, via US Postal Service Priority Mail with Delivery Confirmation. In addition, the SCM must advise the accused of his rights. The SCM should refer to the "*Guide for FCMJ Summary Courts-Martial*," contained in Appendix C of this Regulation, when so advising the accused. The accused should be provided 15 days with which to consult with counsel, thus, if the accused is mailed the DD 458, trial should not be set for at least 20 days to allow the accused to confer with counsel. In most cases, this means that notice of SCM action is sent out during Inactive Duty Training (IDT) with a trial date set for the next scheduled IDT, affording the accused the time to prepare for the proceeding. The accused may request an extension for good cause shown. The SCM has the authority to grant extensions.

f. Should the accused fail to appear for trial as indicated on the FNG 611, pre-trial confinement is authorized to secure the presence of the accused at a rescheduled hearing (see paragraph 4-6, above, for procedures).

g. Preparation of DD 2329 (Record of Trial By Summary Court-Martial) (Figure 5-1, Page 105). The DD 2329 is prepared as follows:

- (1) Block 1 - Information on accused:
  - (A) Name (LAST, FIRST, MI) (upper case);
  - (B) Grade or Rank;
  - (C) Unit or Organization of accused (abbreviated); and
  - (D) SSN.
- (2) Block 2 - Information on the convening authority:
  - (A) Name (LAST, FIRST, MI) (upper case);
  - (B) Rank;
  - (C) Position (i.e., Commander); and
  - (D) Organization of convening authority (abbreviated).
- (3) Block 3 - Information on the SCM:
  - (A) Name (LAST, FIRST, MI) (upper case);
  - (B) Rank; and
  - (C) Unit or Organization of SCM (abbreviated).
- (4) Block 4 - Type in date found in block 15 of the DD 458. SCM must initial block "YES".
- (5) Block 5 - Answer all questions as necessary.
- (6) Block 6 - On the day of the trial, when the accused appears, that date is to be typed in this block.
- (7) Block 7 – Completed after the proceedings.
  - (A) Check yes or no as to whether or not the accused had counsel;
  - (B) If the accused was represented by counsel type in the name of the counsel (Last, First, MI);

(C) Type the counsel's rank (if represented by civilian counsel, leave this block blank);

(D) Type the Article of the FCMJ that is the qualification of the counsel.

(8) Block 8 - "Charge and Specification" will be inserted in the sample format style as shown for the appropriate in Appendix B "Punitive Articles."

h. The SCM should subpoena all witnesses needed for the trial and/or any witnesses requested by the accused (see paragraph 4-8, above). Subpoenas are normally served by the sheriff of the county where the witness resides. (See Section 250.36(1), Fla. Stat.) If the witness is in a duty status on the date of the trial, the witness should be ordered to appear in lieu of subpoena.

#### 5-4. Conduct of trial.

a. When conducting the proceedings, an SCM should use the "*Guide for FCMJ Summary Courts-Martial*" contained in Appendix C of this Regulation, in addition to the guidance offered below.

b. Should the accused reject trial by SCM, the SCM will sign and date block 12 of the DD 2329, release the accused pending further disposition, and forward the DD 458, DD 2329, and any allied documents, to the convening authority for further action.

c. If the accused accepts trial by SCM, the SCM must note whether or not the accused has counsel present. The name (upper case), rank (if military), and qualifications of the counsel will be typed in block 7 of the DD 2329, after the proceedings.

d. The accused shall have the right to be present during all proceedings comprising the SCM.

e. Witnesses will be excluded from the courtroom at all times except when called to testify. Witnesses will be instructed not to discuss their testimony with anyone but the court.

f. If any person refuses to swear or affirm, take unsworn testimony and give appropriate weight to that testimony.

g. If the accused desires to testify, the SCM should question and examine the accused. However, the accused has no obligation to testify. The accused's witnesses shall also be examined by the SCM.

h. If there are findings of guilty, the sentence will be typed in block 9 after the proceedings.

i. The SCM will check the appropriate boxes in blocks 10 and 11 and sign and date block 12.

#### 5-5. Record of trial.

a. The record of trial of a SCM shall be prepared as prescribed below. The convening or higher authority may prescribe additional requirements for the record of trial.

b. Contents. The SCM shall prepare an original and at least two copies of the record of trial, which shall include:

(1) The pleas, findings, and sentence, and if the accused was represented by counsel at the SCM, a notation to that effect;

(2) The fact that the accused was advised of the matters set forth in R.C.M. 1304(b)(1); and

(3) If the SCM is the convening authority, a notation to that effect.

c. Authentication. The SCM shall authenticate the record by signing each copy.

d. Forwarding copies of the record.

(1) Accused's copy. The SCM shall cause a copy of the record of trial to be served on the accused as soon as it is authenticated. The SCM shall cause the accused's receipt for the copy of the record of trial to be obtained and attached to the original record of trial or shall attach to the original record of trial a certificate that the accused was served a copy of the record. If the record of trial was not served on the accused personally, the SCM shall attach a statement explaining how and when such service was accomplished. If the accused was represented by counsel, such counsel may be served with the record of trial.

(2) The record of trial shall be forwarded to the convening authority.

#### 5-6. Post-trial matters.

a. General post-trial procedures, including those applicable for an SCM, are contained in Chapter 8 of this Regulation. Additional SCM post-trial procedures are listed below.

b. Matters submitted by the accused. After a sentence is adjudged, the accused may submit written matters to the convening authority in accordance with R.C.M. 1105.

c. If a sentence of confinement is given, an accused may request deferment of confinement if a hardship can be established, such as the confinement would result in loss of employment, or if an accused has suffered a recent death of an immediate family member, etc. In any case, confinement will not be deferred for more than 90 days.

(1) No sentence of confinement may be executed until the sentence has been approved and so ordered by TAG-FL or his designee.

d. If any sentence imposes a fine, all sums of money collected shall be paid over at once by the officer collecting the fine to the commander of the unit to which the member belongs and be deposited in accordance with Section 250.40(5)(c)1, Fla. Stat.

e. Convening authority's action. The action of the convening authority shall be shown on all copies of the record of trial except that copy provided the accused if the accused has retained that copy.

(1) An order promulgating the result of a trial by SCM need not be issued. A copy of the action shall be forwarded to the accused.

(2) Signature. The action on the original record of trial shall be signed by the convening authority. The convening authority's action on other copies of the record of trial shall either be signed by the convening authority or be prepared and certified as true copies of the original.

(3) The DD 2329, along with the DD 458, and any allied documents, must be reviewed and approved by the convening authority within 30 working days of the trial's adjournment.

e. An accused may submit matters for appeal to the convening authority and/or higher authority to include a review by the command SJA. Any matters submitted must be submitted within seven days of the date the sentence is announced which may be extended by an additional 20 days for good cause.

f. Subsequent action. Any action taken on a SCM after the initial action by the convening authority shall be in writing, signed by the authority taking the action, and promulgated in appropriate orders.

g. Review by a JA. The original record of the SCM shall be reviewed by a JA in accordance with R.C.M. 1112.

h. Appeals of final action taken in an SCM shall be governed by Chapter 9 of this Regulation.

i. Records administration and disposition will be accomplished in accordance with Chapter 8 of this Regulation.

LEFT BLANK INTENTIONALLY

Figure 5-1 – DD 2329 – Record of Trial By Summary Court-Martial (FRONT)

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL			
1a. NAME OF ACCUSED (Last, First, MI) Arthur N. Sherry	b. GRADE OR RANK PFC	c. UNIT OR ORGANIZATION OF ACCUSED Co A, 1st Battalion, 61st Inf	d. SSN 111-11-1111
2a. NAME OF CONVENING AUTHORITY (Last, First, MI) Capt L. Busybody	b. RANK COL	c. POSITION Commander	d. ORGANIZATION OF CONVENING AUTHORITY 61st Infantry Brigade
3a. NAME OF SUMMARY COURT-MARTIAL (If SCM was accused, so state.) Ron F. Andrews	b. RANK MAJ	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL 2d Battalion, 61st Inf	
(Check appropriate answer)			
			YES NO
4. At a preliminary proceeding held on <u>20 September</u> 19 <u>93</u> , the summary court-martial gave the accused a copy of the charge sheet.			X
5. At that preliminary proceeding the summary court-martial informed the accused of the following.			
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.			X
b. The identity of the convening authority.			X
c. The name(s) of the accuser(s).			X
d. The general nature of the charge(s).			X
e. The accused's right to object to trial by summary court-martial.			X
f. The accused's right to inspect the allied papers and immediately available personnel records.			X
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.			X
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.			X
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.			X
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.			X
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.			X
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.			X
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.			X
n. The accused's right to plead guilty or not guilty.			X
6. At the trial proceeding held on <u>21 September</u> 19 <u>93</u> , the accused, after being given a reasonable time to decide, <input type="checkbox"/> did <input checked="" type="checkbox"/> did not object to trial by summary court-martial. (Note: The SCM may ask the accused to initial this entry at the time the election is made.)			
			(Initial) MS
7a. The accused <input type="checkbox"/> was <input checked="" type="checkbox"/> was not represented by counsel. (If the accused was represented by counsel, complete b, c, and d below.)			
b. NAME OF COUNSEL (Last, First, MI)			c. RANK (If any)
d. COUNSEL QUALIFICATIONS			

DD FORM 2329  
84 AUG



CHAPTER 6  
SPECIAL COURTS-MARTIAL

6-1. General.

a. A SPCM shall be used for offenses that cannot, or should not, be redressed by NJP or a SCM, or by a unit member who refuses NJP or trial by SCM, but are less serious than those offenses that should be tried by a GCM.

b. A SPCM may try a commissioned officer.

6-2. Maximum punishments. The following punishments may be imposed in a SPCM:

a. Reprimand, which may be written or verbal;

b. Fine up to \$300.00;

c. Confinement in a county jail not to exceed 100 days;

d. Forfeiture of all pay and allowances for a period of time not to exceed 100 days SAD, AT, Additional Duty for Special Workdays, or 100 UTA's;

e. Reduction of enlisted personnel to the lowest grade, or any intermediate grade;

f. Discharge with a characterization of no less favorable than BCD for enlisted personnel.

g. A BCD may only be imposed by a SPCM that has been given the authority to do so by the SPCM convening authority.

h. A SPCM cannot impose dismissal of an officer. A non-BCD SPCM may not impose a discharge of an enlisted person.

i. Two or more punishments may be combined in the sentence.

6-3. Pretrial matters.

a. A commander who is faced with an offense which should not be redressed by NJP or trial by SCM, but is less than those offenses that should be considered by a GCM, or by a unit member who refuses NJP or trial by SCM, will prepare charges and specifications in accordance with Chapter 4, above. The commander will notify the accused of the charges against him, the name of the accuser, and any witnesses that may be called to testify against the accused. After completing block 12 of DD 458, the commander will forward the DD 458, and any allied documents and evidence, along

with the results of an informal investigation, through the SCM convening authority with a request that a SPCM be convened.

b. The SPCM convening authority will take the following steps:

(1) Review the investigative report and all submitted documents paying particular attention to whether or not the accused has been offered and refused NJP and/or trial by SCM;

(2) If the accused has refused NJP and/or trial by SCM, the convening authority may convene a SPCM. (See Figure 6-1, Page 113, for an example of a SPCM Convening Order) The convening authority may also deny the request for a SPCM. Alternatively, he may request TAG-FL initiate GCM proceedings; and/or

(3) If the accused has not been offered NJP or trial by SCM, the convening authority may offer the accused those alternatives if he deems that appropriate. (See Chapter 3, Non-Judicial Punishment, or Chapter 5, Summary Court-Martial, as appropriate.) The convening authority may, of course, take any of those actions set forth in the preceding paragraphs.

c. Upon the issuance of the SPCM convening order, the detailed trial counsel shall:

(1) Confront the accused member and give him a copy of the court-martial convening order and a completed copy of the DD 458;

(2) Advise the member of his rights as follows:

"A Special Court-Martial is a formal proceeding. You are entitled to a military lawyer to represent you at the expense of the Florida National Guard. That person's name is \_\_\_\_\_.  
Your attorney is duly qualified under the Rules for Court-Martial Section 27(b). You are also entitled to civilian counsel at your own expense."

(3) If personal service upon the accused is not possible, the trial counsel may send the DD 458, convening order, and name of defense counsel to the accused's last known address, via US Postal Service Priority Mail with Delivery Confirmation.

(4) Complete block 15 of the DD 458 after serving notice and advice to the accused.

d. When the date of the court-martial, or any session of the court-martial, is set, the accused will be furnished a copy of the FNG 611 in the same manner as provided for serving the accused with the DD 458.

e. If the accused fails to appear as ordered, he may be placed in pre-trial confinement. To effect pre-trial confinement the military judge shall, after establishing that the provisions of paragraph 4-6, above, are met, execute a pre-trial confinement warrant.

6-4. Composition. A SPCM shall consist of:

a. A military judge and not less than three members; or

b. A military judge alone, if requested, and approved under R.C.M. 903.

c. Enlisted members. An enlisted accused may request that enlisted persons serve as members of the SPCM to which that accused's case has been or will be referred. If such a request is made, an enlisted accused may not be tried by a court-martial if the panel does not include enlisted members comprising at least one-third of the panel members, unless eligible enlisted members cannot be obtained because of physical conditions or military exigencies.

6-5. Arraignment. Prior to the trial, the military judge will conduct a formal arraignment in accordance with R.C.M. 904 (See paragraph 4-11 above).

6-6. Conduct of trial. The military judge shall conduct the SPCM trial proceedings in accordance with the "*Guide for General and Special Courts-Martial*" contained in Appendix 8 of the MCM (2002 ed.).

6-7. Findings and sentencing.

a. A decision by the military judge, or concurrence of two-thirds of the court membership, is required for conviction and sentencing. A vote on findings by a court consisting of members resulting in votes of guilty by less than two-thirds of the members of the court constitutes a finding of not guilty.

b. In general. The sentence shall be announced by the military judge, in the presence of all parties promptly after it has been determined.

c. Reconsideration of sentence. A sentence may be reconsidered at any time before such sentence is announced in open session of the court.

d. Clarification of sentence. A sentence may be clarified at any time prior to action of the convening authority on the case.

(1) Sentence adjudged by the military judge. When a sentence adjudged by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practical after the ambiguity is discovered.

(2) Sentence adjudged by members. When a sentence adjudged by members is ambiguous, the military judge shall bring the matter to the attention of the members if the matter is discovered before the court-martial is adjourned. If the matter is discovered after adjournment, the military judge may call a session for clarification by the members who adjudged the sentence as soon as practical after the ambiguity is discovered.

e. The sentence of a court-martial may not be executed until approved by the convening authority.

(1) If any sentence imposes a fine, all sums of money collected shall be paid over at once by the officer collecting the fine to the commander of the unit to which the member belongs and be deposited in accordance with Section 250.40(5)(c)1, Fla. Stat.

(2) Pursuant to R.C.M. 1101, and Section 250.36(4), Fla. Stat., TAG-FL, or his designee, may order the accused into post-trial confinement when a sentence of confinement has been adjudged by a court-martial.

(3) If any sentence imposes confinement in a county jail, and the sentence of confinement is approved by the convening authority, it will be forwarded to TAG-FL, Attn: SJA, for approval by TAG-FL, or his designee. No sentence of confinement will be executed until it is approved by TAG-FL, or his designee.

(A) Once a sentence of confinement is approved by TAG-FL a confinement warrant will be completed by the OSJA, JFHQ-FL, for signature by TAG-FL, or his designee, and forwarded to the commander of the accused for execution of the sentence.

(B) Once the commander has received the confinement warrant, an FNG 636 will be prepared (unless one was completed for pre-trial confinement), and these two documents will be taken to the sheriff of the county where the accused resides for disposition.

(4) No accused shall be retained in confinement for a period longer than that to which he has been sentenced. In the event the period of confinement is later reduced, vacated, suspended, set aside or disapproved the accused shall be given credit for time served toward what confinement is finally approved. In the event of a complete reversal or disapproval of the sentence the accused shall be paid his base pay for each day spent in post-trial confinement as SAD less enlisted differential pay.

f. Court-Martial forfeitures. Sentences of courts-martial pertaining to forfeiture of pay that have been adjudged and approved in accordance with state law may be input for collection through manual payroll at the United States Property and Fiscal Office (USP&FO) Military Pay section. A DD 114 (Military Pay Order) will be prepared in

triplicate and forwarded to the USP&FO with a copy of the court-martial promulgating order for collection of forfeitures.

g. If the sentence of confinement resulting from a court-martial exceeds the member's Expiration of Term of Service (ETS) date, that date will be extended to accommodate the sentence. The unit will initiate DA 4836, and involuntarily extend the sentenced individual for sufficient time to cover the sentence (see paragraphs 2-14d and 7-3d(2), NGR 600-200). This action can be accomplished while awaiting the execution of the confinement order from JFHQ-FL. The convening authority may notify and coordinate with DCSPER to facilitate the action or if any questions arise in this area.

6-8. Notice concerning post-trial and appellate rights.

a. In each GCM and SPCM, prior to adjournment, the military judge shall ensure that the defense counsel has informed the accused orally and in writing of:

(1) The right to submit matters to the convening authority to consider before taking action;

(2) The right to appellate review, as applicable, and the effect of waiver or withdrawal of such right; and

(3) The right to the advice and assistance of counsel in the exercise of the foregoing rights or any decision to waive them.

b. The written advice to the accused concerning post-trial and appellate rights shall be signed by the accused and the defense counsel and inserted in the record of trial as an appellate exhibit.

6-9. Adjournment. The military judge may adjourn the court-martial at the end of the trial of an accused or proceed to trial of other cases referred to that court-martial. Such an adjournment may be for a definite or indefinite period.

6-10. Post-trial matters. Post-trial procedures are detailed in Chapter 8 of this Regulation as well as the MCM.

LEFT BLANK INTENTIONALLY

Figure 6-1 - Sample Special/General Court-Martial Convening Order

HEADQUARTERS, 53RD INFANTRY BRIGADE  
Florida Army National Guard  
Armed Forces Reserve Center  
Pinellas Park, Florida 33606-1245

COURT-MARTIAL CONVENING ORDER  
NUMBER 2

12 March 2006

A Special Court-Martial is hereby convened. It may proceed at the National Guard Armory, Pinellas Park, Florida, to try Specialist John A. Doe, 987-65-4321, FLARNG, Headquarters and Headquarters Company, 2nd Battalion, 124th Infantry, 53rd Infantry Brigade. The Court will be constituted as follows:

Members

LTC Norma Blue, 345-67-8901, IN, 53rd Inf Bde, Tampa, FL (Pres.)  
MAJ Alfred Green, 456-78-9012, IN, Hq, 2/124th IN, Tampa, FL  
CPT Albert Black, 567-89-0123, IN, Hq, 2/124th IN, Tampa, FL  
CPT Nick Gold, 678-90-1234, IN, Hq, 2/124th IN, Tampa, FL  
1LT George Redd, 789-01-2345, IN, Co B, 2/124th IN, Tampa, FL

Counsel

CPT Harold Brown, 890-12-3456, JA, Hq, 53rd Inf Bde, Tampa, FL, TRIAL COUNSEL, certified in accordance with Article 27(b) and previously sworn in accordance with Article 42(a).

CPT Jimmy White, 901-23-4567, JA, JFHQ-FL, St. Augustine, FL, DEFENSE COUNSEL, certified in accordance with Article 27(b) and previously sworn in accordance with Article 42(a).

BY COMMAND OF BRIGADIER GENERAL STRONG:

DISTRIBUTION:  
TAG-FL, ATTN: SJA  
TAG-FL, ATTN: DCSPER  
Cdr, 2/124th INF  
Bde JAG File  
Bde Rec File

ARNOLD O. JONES  
LTC, IN, FLARNG  
Adjutant

LEFT BLANK INTENTIONALLY

CHAPTER 7  
GENERAL COURTS-MARTIAL

7-1. General. A GCM shall be used for offenses that cannot, or should not, be redressed by a SPCM. A GCM may be convened by order of the President of the United States, the Governor, or TAG-FL as delegated by the Governor. A GCM is a formal proceeding in which National Guard personnel are detailed as members of the court-martial panel, trial counsel (prosecutor), defense counsel, and military judge.

7-2. Maximum punishments. The following punishments may be imposed in a GCM by a military court, or military judge:

- a. Verbal or written reprimand;
- b. Fine up to \$500.00;
- c. Confinement in a county jail not to exceed 200 days;
- d. Forfeiture of all pay and allowances for a period of time not to exceed 200 days SAD, AT, or 200 UTAs per offense;
- e. Reduction of enlisted personnel to the lowest grade or any intermediate grade for enlisted personnel;
- f. Dismissal of officers or discharge of enlisted personnel from the service with any characterization including dishonorable;
- g. Any two or more of such punishments may be combined in the sentence.

7-3. Article 32, FCMJ, Investigations.

a. If, upon receipt of the DD 458 and allied documents, prepared in accordance with Chapter 4, the officer exercising SPCM jurisdiction believes that a GCM is appropriate, he shall request a formal Article 32, FCMJ, Investigation. The request shall be forwarded, through command channels, to TAG-FL, together with the DD 458 and allied documents.

b. TAG-FL may dismiss any or all of the charges, take any action authorized by a subordinate commander, refer the matter back to the SPCM convening authority for action within that officer's authority, or initiate an Article 32, FCMJ, investigation by appointing an Investigating Officer (IO).

(1) TAG-FL can designate a SPCM convening authority to appoint an Article 32 IO. If this procedure is used, recommendations will be forwarded through the SPCM convening authority to TAG-FL for review.

(2) In appointing an IO, TAG-FL will also appoint defense counsel to represent the accused in the Article 32, FCMJ, proceedings and during any subsequent GCM or SPCM. (Article 32 Investigations will be conducted using DD Form 457 (Investigating Officer's Report) (Figure 7-1, Page 121).

c. The Article 32, FCMJ, IO will conduct his investigation in accordance with the provisions of DA Pam 27-17 and the MCM.

d. An accused may waive the Article 32 proceedings.

#### 7-4. Pretrial matters.

a. After reviewing the Article 32, FCMJ, IO report, if TAG-FL determines that a GCM is appropriate, he will issue a Convening Order.

b. Upon receipt of the GCM convening order, the trial counsel shall:

(1) Confront the accused member and give him a copy of the GCM convening order, a completed copy of the DD 458, and the FNG 611.

(2) Advise the member of his rights as follows:

*"You do not have to make any statements and I advise you that you should not make any statements regarding the offenses that you have been accused of committing. Any statement made regarding the offenses that you have been accused of committing may be used against you in this General Court-Martial or in any subsequent Court-Martial."*

*"A General Court-Martial is a formal proceeding. You are entitled to the attorney appointed during the Article 32 Investigation proceedings to represent you at the expense of the Florida National Guard. That person's name is \_\_\_\_\_. Your attorney is duly qualified and is a member of the Florida Bar. You are also entitled to civilian counsel at your own expense."*

*"A General Court-Martial will be composed of a panel of officers, and enlisted personnel, if you request them in writing. If you wish to have enlisted personnel on your Court, please discuss this with your attorney."*

*"Your attorney will have the right to call witnesses to testify on your behalf and to present any evidence to the Court that you may have regarding this case. Your attorney will have the right to cross-examine witnesses against you and, if you are convicted, to make a statement on your behalf. Your military record will be made available to the General Court-Martial for consideration and your attorney will have an opportunity to review that record for any errors that it may contain."*

(3) If personal service upon the accused is not possible, the trial counsel may send the DD 458, convening order, and name of defense counsel to the accused's last known address, via US Postal Service Priority Mail with Delivery Confirmation.

(4) Complete block 15 of the DD 458 after serving notice to the accused.

c. If the accused fails to appear as ordered, he may be placed in pre-trial confinement. To effect pre-trial confinement, the military judge shall, after establishing that the provisions of paragraph 4-6, above, are met, execute an pre-trial confinement warrant.

7-5. Composition. A GCM shall consist of:

a. A military judge and not less than five members; or

b. A military judge alone, if requested, and approved under R.C.M. 903.

c. Enlisted members. An enlisted accused may request that enlisted persons serve as members of the GCM to which that accused's case has been or will be referred. If such a request is made, an enlisted accused may not be tried by a court-martial if the panel does not include enlisted members comprising at least one-third of the panel members, unless eligible enlisted members cannot be obtained because of physical conditions or military exigencies.

7-6. Arraignment. Prior to the trial, the military judge will conduct a formal arraignment in accordance with R.C.M. 904 (See paragraph 4-11 above).

7-7. Conduct of trial. The military judge shall conduct the GCM trial proceedings in accordance with the "Guide for General and Special Courts-Martial" contained in Appendix 8 of the MCM (2002 ed.).

7-8. Findings and sentencing.

a. A decision by the military judge, or concurrence of two-thirds of the court membership, is required for conviction and sentencing. A vote on findings by a court

consisting of members resulting in votes of guilty by less than two-thirds of the members of the court constitutes a finding of not guilty.

b. In general. The sentence shall be announced by the military judge, in the presence of all parties promptly after it has been determined.

c. Reconsideration of sentence. A sentence may be reconsidered at any time before such sentence is announced in open session of the court.

d. Clarification of sentence. A sentence may be clarified at any time prior to action of the convening authority on the case.

(1) Sentence adjudged by the military judge. When a sentence adjudged by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practical after the ambiguity is discovered.

(2) Sentence adjudged by members. When a sentence adjudged by members is ambiguous, the military judge shall bring the matter to the attention of the members if the matter is discovered before the court-martial is adjourned. If the matter is discovered after adjournment, the military judge may call a session for clarification by the members who adjudged the sentence as soon as practical after the ambiguity is discovered.

e. The sentence of a court-martial may not be executed until approved by the convening authority.

(1) If any sentence imposes a fine, all sums of money collected shall be paid over at once by the officer collecting the fine to the commander of the unit to which the member belongs and be deposited in accordance with Section 250.40(5)(c)1, Fla. Stat.

(2) Pursuant to R.C.M. 1101, and Section 250.36(4), Fla. Stat., TAG-FL, or his designee, may order the accused into post-trial confinement when a sentence of confinement has been adjudged by a court-martial.

(3) If any sentence imposes confinement in a county jail, and the sentence of confinement is approved by the convening authority, it will be forwarded to TAG-FL, Attn: SJA, for approval by TAG-FL, or his designee. No sentence of confinement will be executed until it is approved by TAG-FL, or his designee.

(A) Once a sentence of confinement is approved by TAG-FL a confinement warrant will be completed by the OSJA, JFHQ-FL, for signature by TAG-FL, or his designee, and forwarded to the commander of the accused for execution of the sentence.

(B) Once the commander has received the confinement warrant, an FNG 636 will be prepared (unless one was completed for pre-trial confinement), and these two documents will be taken to the sheriff of the county where the accused resides for disposition.

(4) No accused shall be retained in confinement for a period longer than that to which he has been sentenced. In the event the period of confinement is later reduced, vacated, suspended, set aside or disapproved the accused shall be given credit for time served toward what confinement is finally approved. In the event of a complete reversal or disapproval of the sentence the accused shall be paid his base pay for each day spent in post-trial confinement as SAD less enlisted differential pay.

f. Courts-Martial forfeitures. Sentences of courts-martial pertaining to forfeiture of pay that have been adjudged and approved in accordance with state law may be input for collection through manual payroll at the USP&FO, Military Pay section. A DD 114 will be prepared in triplicate and forwarded to the USP&FO with a copy of the court-martial promulgating order for collection of forfeitures.

g. If the sentence of confinement resulting from a court-martial exceeds the member's ETS date, that date will be extended to accommodate the sentence. The unit will initiate DA 4836, and involuntarily extend the sentenced individual for sufficient time to cover the sentence (see paragraphs 2-14d and 7-3d(2), NGR 600-200). This action can be accomplished while awaiting the execution of the confinement order from JFHQ-FL. The convening authority may notify and coordinate with DCSPER to facilitate the action or if any questions arise in this area.

7-9. Notice concerning post-trial and appellate rights.

a. In each GCM and SPCM, prior to adjournment, the military judge shall ensure that the defense counsel has informed the accused orally and in writing of:

(1) The right to submit matters to the convening authority to consider before taking action;

(2) The right to appellate review, as applicable, and the effect of waiver or withdrawal of such right; and

(3) The right to the advice and assistance of counsel in the exercise of the foregoing rights or any decision to waive them.

b. The written advice to the accused concerning post-trial and appellate rights shall be signed by the accused and the defense counsel and inserted in the record of trial as an appellate exhibit.

7-10. Adjournment. The military judge may adjourn the court-martial at the end of the trial of an accused or proceed to trial of other cases referred to that court-martial. Such an adjournment may be for a definite or indefinite period.

7-11. Post-trial matters. Post-trial procedures are detailed in Chapter 8 of this Regulation as well as the MCM.

Figure 7-1 – DD 457 – Investigating Officer’s Report (FRONT)

INVESTIGATING OFFICER'S REPORT (Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)					
1a. FROM: (Name of Investigating Officer Last, First, MI) <b>MONTERO, REINALDO</b>		b. GRADE <b>MAJ</b>	c. ORGANIZATION <b>HHC, 53rd Infantry Brigade (Sep) 2801 Grand Avenue Pinellas Park, FL 33782</b>		d. DATE OF REPORT <b>1 May 2006</b>
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) <b>GALLANT, RICHARD J</b>		b. TITLE <b>BRIGADE COMMANDER</b>	c. ORGANIZATION <b>HQ, 53rd Infantry Brigade (Sep) 2801 Grand Avenue Pinellas Park, FL 33782</b>		
3a. NAME OF ACCUSED (Last, First, MI) <b>RILEY MICHAEL D</b>		b. GRADE <b>SSG</b>	c. SSN <b>012-34-5678</b>	d. ORGANIZATION <b>HQ, 53rd Infantry Brigade (Sep) Pinellas Park, FL 33782</b>	e. DATE OF CHARGES <b>21 April 2006</b>
(Check appropriate answer)					
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)					YES <input checked="" type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)					NO <input checked="" type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)					
7a. NAME OF DEFENSE COUNSEL (Last, First, MI)		b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)		b. GRADE
c. ORGANIZATION (If appropriate)		c. ORGANIZATION (If appropriate)			
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)			
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)					
a. PLACE <b>AFRC, PINELLAS PARK, FL 33782</b>			b. DATE <b>1 May 2006</b>		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.					
c. SIGNATURE OF ACCUSED 					
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)					YES
a. THE CHARGE(S) UNDER INVESTIGATION					<input checked="" type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER					<input checked="" type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31					<input checked="" type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION					<input checked="" type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE					<input checked="" type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT					<input checked="" type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES					<input checked="" type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED					<input checked="" type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION					<input checked="" type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING					<input checked="" type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)					<input checked="" type="checkbox"/>
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL					
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."					



CHAPTER 8  
POST-TRIAL PROCEDURE

8-1. Report of result of trial; deferment of confinement, forfeitures and reduction in grade.

a. Report of the result of trial. After final adjournment of the court-martial in a case, the trial counsel shall promptly notify the accused's immediate commander, the convening authority or the convening authority's designee, of the findings and sentence.

b. Deferment of confinement, forfeitures or reduction in grade.

(1) Deferment of a sentence to confinement, forfeitures, or reduction in grade is a postponement of the running of the sentence.

(2) Deferment is not a suspension of the sentence or a form of clemency.

(3) Who may defer. The convening authority or, if the accused is no longer in the convening authority's jurisdiction, the officer exercising GCM jurisdiction over the command to which the accused is assigned, may, upon written application of the accused, at any time after the adjournment of the court-martial, defer the accused's service of a sentence to confinement, forfeitures, or reduction in grade that has not been ordered executed.

(4) Action on deferment request. All requests for deferment will be handled in accordance with R.C.M. 1101.

8-2. Post-trial sessions.

a. In general. Post-trial sessions may be proceedings in revision or Article 39(a) sessions. Such sessions may be directed by the military judge or the convening authority in accordance with R.C.M. 1102.

b. Purpose.

(1) Proceedings in revision. Proceedings in revision may be directed to correct an apparent error, omission, or improper or inconsistent action by the court-martial, which can be rectified by reopening the proceedings without material prejudice to the accused.

(2) Because the action at a proceeding in revision is corrective, a proceeding in revision may not be conducted for the purpose of presenting additional evidence.

(3) Article 39(a) sessions. An Article 39(a) session under this rule may be called for the purpose of inquiring into and, when appropriate, resolving any matter which arises after trial and which substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or *sua sponte*, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence.

c. The military judge may direct a post-trial session any time before the record is authenticated. The convening authority may direct a post-trial session any time before the convening authority takes initial action on the case or at such later time as the convening authority is authorized to do so by a reviewing authority, except that no proceeding in revision may be held when any part of the sentence has been ordered executed.

d. Procedure.

(1) Personnel. The requirements of R.C.M. 505 and 805 shall apply at post-trial sessions except that:

(A) For a proceeding in revision, if trial was before members and the matter subject to the proceeding in revision requires the presence of members:

(i) The absence of any members does not invalidate the proceedings if, in the case of a GCM, at least five members are present, or, in the case of a SPCM, at least three members are present; and

(ii) A different military judge may be detailed, subject to R.C.M. 502(c) and 902, if the military judge who presided at the earlier proceedings is not available.

(B) For an Article 39(a) session, a different military judge may be detailed, subject to R.C.M. 502(c) and 902, for good cause.

(2) Action. The military judge shall take such action as may be appropriate, including appropriate instructions when members are present. The members may deliberate in closed session, if necessary, to determine what corrective action, if any, to take.

(3) Record. All post-trial sessions, except any deliberations by the members, shall be held in open session. The record of the post-trial sessions shall be prepared, authenticated, and served in accordance with R.C.M. 1103 and 1104 and shall be included in the record of the prior proceedings.

## 8-3. Preparation of record of trial.

a. In general. Each GCM, SPCM, and SCM shall keep a separate record of the proceedings in each case brought before it.

## b. General Courts-Martial.

## (1) Responsibility for preparation. The trial counsel shall:

(A) Under the direction of the military judge, cause the record of trial to be prepared; and

(B) Cause to be retained stenographic or other notes or mechanical or electronic recordings from which the record of trial was prepared.

## (2) Contents.

(A) In general. The record of trial in each GCM shall be separate, complete, and independent of any other document.

(B) Verbatim transcript required. The record of trial in a GCM shall include a verbatim written transcript of all sessions except sessions closed for deliberations.

(C) Other matters. In addition to the transcript of the proceedings, a complete record shall include:

(i) The original charge sheet or a duplicate;

(ii) A copy of the convening order and any amending order(s);

(iii) The request, if any, for trial by military judge alone, or that the membership of the court martial include enlisted persons;

(iv) The original action, dated and signed by the convening authority; and

(v) Exhibits, or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were received in evidence and any appellate exhibits.

(3) Matters attached to the record. The following matters shall be attached to the record:

- (A) If not used as exhibits:
    - (i) The report of investigation under Article 32, if any;
    - (ii) The SJA's pretrial advice under Article 34, if any;
    - (iii) If the trial was a rehearing or new or other trial of the case, the record of the former hearing(s); and
    - (iv) Written special findings, if any, by the military judge.
  - (B) Exhibits or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were marked for and referred to on the record but not received in evidence;
  - (C) Any matter filed by the accused under R.C.M. 1105, or any written waiver of the right to submit such matter;
  - (D) Explanation for any substitute authentication under R.C.M. 1104(a)(2)(B);
  - (E) Explanation for any failure to serve the record of trial on the accused under R.C.M. 1104(b);
  - (F) The post-trial recommendation of the SJA and proof of service on defense counsel in accordance with R.C.M. 1106(f)(1);
  - (G) Any response by defense counsel to the SJA post-trial review;
  - (H) Recommendations and other papers relative to clemency;
  - (I) Any statement why it is impracticable for the convening authority to act;
- and
- (J) Any waiver or withdrawal of appellate review under R.C.M. 1110.

c. Special Courts-Martial.

(1) Involving a BCD. The requirements for preparation of the record of trial in a SPCM empowered to adjudge a BCD, shall be the same as for a GCM, as listed above.

(2) All other SPCMs. If the SPCM did not involve a BCD, the record of trial shall be prepared as for GCM or SPCM empowered to adjudge a BCD, except that no verbatim transcript or SJA review or defense response is required.

d. Summary Courts-Martial. The SCM record of trial shall be prepared as prescribed in Chapter 4 of this Regulation.

e. Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings.

(1) If SPCM or GCM proceedings resulted in an acquittal of all charges and specifications, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings, the record may consist of the original charge sheet, a copy of the convening order and amending orders (if any), and sufficient information to establish jurisdiction over the accused and the offenses (if not shown on the charge sheet). The convening authority or higher authority may prescribe additional requirements.

(2) The notes or recordings of court-martial proceedings described in this subsection should be retained if reinstatement and re-referral of the affected charges is likely or when they may be necessary for the trial of another accused in a related case.

f. Loss of notes or recordings of the proceedings. If, because of loss of recordings or notes, or other reasons, a verbatim transcript cannot be prepared when required, a record which meets the requirements of R.C.M. 1103(b)(2)(C) shall be prepared, and the convening authority may:

(1) Approve only so much of the sentence that could be adjudged by a SPCM, except that a BCD may not be approved; or

(2B) Direct a rehearing as to any offense of which the accused was found guilty if the finding is supported by the summary of the evidence contained in the record, provided that the court-martial in a rehearing may not adjudge any sentence in excess of that adjudged by the earlier court-martial.

g. Copies of the record of trial.

(1) General and Special Courts-Martial.

(A) In general. In courts-martial proceedings which require a verbatim transcript or are subject to a review by the First District Court of Appeal of Florida (1<sup>st</sup> DCA) under Article 66, FCMJ, the trial counsel shall cause the records of trial to be prepared in accordance with Chapter 9 of this Regulation and the Florida Rules of Appellate Procedure.

(B) In all other SPCM proceedings, the trial counsel shall cause to be prepared an original and one copy of the record of trial.

(2) Additional copies. The convening or higher authority may direct that additional copies of the record of trial of any GCM or SPCM be prepared.

(3) Summary Courts-Martial. Copies of the SCM record of trial shall be prepared as prescribed in Chapter 4 of this Regulation.

h. Examination and correction before authentication. General and Special Courts-Martial.

(1) Examination and correction by trial counsel. In GCMs and SPCMs, the trial counsel shall examine the record of trial before authentication and cause those changes to be made which are necessary to report the proceedings accurately. The trial counsel shall not change the record after authentication.

(2) Examination by defense counsel. Except when unreasonable delay will result, the trial counsel shall permit the defense counsel to examine the record before authentication.

8-4. Records of trial: authentication; service; loss; correction; forwarding.

a. Authentication.

(1) In general. A record is authenticated by the signature of a person specified in this Regulation who thereby declares that the record accurately reports the proceedings. No person may be required to authenticate a record of trial if that person is not satisfied that it accurately reports the proceedings.

(2) General and Special Courts-Martial.

(A) Authentication by the military judge. In all SPCM and GCM proceedings, the military judge present at the end of the proceedings shall authenticate the record of trial, or that portion over which the military judge presided. If more than one military judge presided over the proceedings, each military judge shall authenticate the record of the proceedings over which that military judge presided.

(B) Substitute authentication. If the military judge cannot authenticate the record of trial because of the military judge's death, disability, or absence, the trial counsel present at the end of the proceedings shall authenticate the record of trial. If the trial counsel cannot authenticate the record of trial because of the trial counsel's death, disability, or absence, a member shall authenticate the record of trial. In a court-martial composed of a military judge alone, or as to sessions without members, the court reporter shall authenticate the record of trial when this duty would fall upon a member under this subsection. A person authorized to authenticate a record under this Regulation may authenticate the record only as to those proceedings at which that person was present.

(3) Summary Courts-Martial. The SCM shall authenticate the SCM record of trial as prescribed in Chapter 5 of this Regulation.

b. Service. General and Special Courts-Martial.

(1) Service of record of trial on accused. In each GCM and SPCM, the trial counsel shall cause a copy of the record of trial to be served on the accused as soon as the record of trial is authenticated.

(2) Proof of service of record of trial on accused. The trial counsel shall cause the accused's receipt for the copy of the record of trial to be attached to the original record of trial.

(3C) Substitute service. If it is impracticable to serve the record of trial on the accused, or if the accused so requests on the record at the court-martial or in writing, the accused's copy of the record shall be forwarded to the accused's defense counsel, if any. Trial counsel shall attach a statement to the record explaining why the accused was not served personally. If the accused has more than one counsel, R.C.M. 1106(f)(2) shall apply.

c. Loss of record. If the authenticated record of trial is lost or destroyed, the trial counsel shall, if practicable, cause another record of trial to be prepared for authentication. The new record of trial shall become the record of trial in the case if the requirements of R.C.M. 1103 and this Regulation are met.

d. Correction of record after authentication; certificate of correction.

(1) In general. A record of trial found to be incomplete or defective after authentication may be corrected to make it accurate. A record of trial may be returned to the convening authority by superior competent authority for correction under this rule.

(2) Procedure. An authenticated record of trial believed to be incomplete or defective may be returned to the military judge or SCM for a certificate of correction. The military judge or SCM shall give notice of the proposed correction to all parties and permit them to examine and respond to the proposed correction before authenticating the certificate of correction.

e. Forwarding. After every court-martial, including a rehearing and new and other trials, the authenticated record shall be forwarded to the convening authority for initial review and action, provided that in case of a SPCM in which a BCD was adjudged or a GCM, the convening authority shall refer the record to the SJA for recommendation under R.C.M. 1106 before the convening authority takes action.

#### 8-5. Matters submitted by the accused.

a. After a sentence is adjudged in any court-martial, the accused may submit matters to the convening authority in accordance with this rule.

b. Matters which may be submitted.

(1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence. The convening authority is only required to consider written submissions.

(2) Submissions are not subject to the Mil. R. Evid. and may include:

(A) Allegations of errors affecting the legality of the findings or sentence;

(B) Portions or summaries of the record and copies of documentary evidence offered or introduced at trial;

(C) Matters in mitigation which were not available for consideration at the court-martial; and

(D) Clemency recommendations by any member, the military judge, or any other person. The defense may ask any person for such a recommendation.

c. Time periods.

(1) General Court-Martial and Special Court-Martial proceedings. After a GCM or SPCM, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the SJA, or an addendum to the recommendation containing new matter is served on the accused. If, within the 10-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority's SJA may, for good cause, extend the 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension.

(2) Summary Courts-Martial. Matters submitted by an accused following a SCM shall be in accordance with Chapter 5 of this Regulation.

(3) Post-trial sessions. A post-trial session under R.C.M. 1102 shall have no effect on the running of any time period in this rule, except when such session results in the announcement of a new sentence, in which case the period shall run from that announcement.

(4) Good cause. For purposes of this rule, good cause for an extension ordinarily does not include the need for securing matters which could reasonably have been presented at the court-martial.

d. Waiver.

(1) Failure to submit matters. Failure to submit matters within the time prescribed by this rule shall be deemed a waiver of the right to submit such matters.

(2) Written waiver. The accused may expressly waive, in writing, the right to submit matters under this rule. Once filed, such waiver may not be revoked.

(3) Absence of accused. If, as a result of the unauthorized absence of the accused, the record cannot be served on the accused and if the accused has no counsel to receive the record, the accused shall be deemed to have waived the right to submit matters under this rule within the time limit which begins upon service on the accused of the record of trial.

8-6. Recommendation of the SJA.

a. In general. Before the convening authority takes action under R.C.M. 1107 on a record of trial by GCM or SPCM that convening authority's SJA shall forward to the convening authority a recommendation under this rule.

b. Disqualification. No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, associate or assistant defense counsel, or IO in any case may later act as SJA to any reviewing or convening authority in the same case.

c. Form and content of recommendation.

(1) The purpose of the recommendation of the SJA is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The SJA shall use the record of trial in the preparation of the recommendation.

(2) Form. The recommendation of the SJA shall be a written communication, which shall include concise information as to:

(A) The findings and sentence adjudged by the court-martial;

(B) A recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence;

(C) A summary of the accused's service record, to include length and character of service, awards and decorations received, and any record of NJPs and previous convictions;

(D) A statement of the nature and duration of any pretrial restraint;

(E) If there is a pretrial agreement, a statement of any action the convening authority is obligated to take under the agreement or a statement of the reasons why the convening authority is not obligated to take specific action under the agreement; and

(F) A specific recommendation as to the action to be taken by the convening authority on the sentence.

(3) A sample SJA recommendation is at Figure 8-1, Page 141 of this Regulation.

(4) Legal errors. The SJA is not required to examine the record for legal errors. However, when the recommendation is prepared by an SJA, the SJA shall state whether, in the SJA's opinion, corrective action on the findings or sentence should be taken when an allegation of legal error is raised in matters submitted under R.C.M. 1105 or when otherwise deemed appropriate by the SJA. The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the SJA's statement, if any, concerning legal errors is not required.

(5) Optional matters. The recommendation of the SJA may include, in addition to matters listed above, any additional matters deemed appropriate by the SJA. Such matter may include matters outside the record.

d. No findings of guilty. If the proceedings resulted in an acquittal, or if, after the trial began, the proceedings were terminated without findings and no further action is contemplated, a recommendation by the SJA is not required.

e. Service of recommendation on defense counsel and accused; defense response.

(1) Before forwarding the recommendation and the record of trial to the convening authority for action under R.C.M. 1107, the SJA shall serve a copy of the recommendation on counsel for the accused. A separate copy will be served on the accused, if possible. If not served on the accused, a statement shall be attached to the record explaining why the accused was not served personally.

(2) The accused may, at trial or in writing to the SJA before the recommendation has been served under this rule, designate which counsel (detailed, individual military, or civilian) will be served with the recommendation.

(3) Record of trial. The SJA shall, upon request of counsel for the accused served with the recommendation, provide that counsel with a copy of the record of trial for use while preparing the response to the recommendation.

(4) Response. Counsel for the accused may submit, in writing, corrections or rebuttal to any matter in the recommendation believed to be erroneous, inadequate, or misleading, and may comment on any other matter.

(5) Time period. Counsel for the accused shall be given 10 days from service of the record of trial under R.C.M. 1104(b) or receipt of the recommendation, whichever is later, in which to submit comments on the recommendation. The convening authority may, for good cause, extend the period in which comments may be submitted for up to 20 additional days.

(6) Waiver. Failure of counsel for the accused to comment on any matter in the recommendation or matters attached to the recommendation in a timely manner shall waive later claim of error with regard to such matter in the absence of plain error.

#### 8-7. Action by convening authority.

a. The convening authority shall take action on the sentence and, in the discretion of the convening authority, the findings. If it is impracticable for the convening authority to act, the convening authority shall forward the case to an officer exercising GCM jurisdiction who may take action.

b. The convening authority may not delegate the function of taking action on the findings or sentence. The convening authority that convened the court-martial may take action on the case regardless whether the accused is a member of, or present in, the convening authority's command.

#### c. General considerations.

(1) Discretion of convening authority. The action to be taken on the findings and sentence is within the sole discretion of the convening authority.

(2) When action may be taken. The convening authority may take action only after the applicable time periods under R.C.M. 1105(c) have expired or the accused has waived the right to present matters under R.C.M. 1105(d), whichever is earlier.

#### (3) Matters considered.

(A) Required matters. Before taking action, the convening authority shall consider:

- (i) The result of trial;
- (ii) The recommendation of the SJA under R.C.M. 1106, if applicable; and
- (iii) Any matters submitted by the accused under R.C.M. 1105 or, if applicable, R.C.M. 1106(f).

(B) Additional matters. Before taking action the convening authority may consider:

- (i) The record of trial;
  - (ii) The personnel records of the accused; and
  - (iii) Such other matters as the convening authority deems appropriate.
- However, if the convening authority considers matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused shall be notified and given an opportunity to rebut.

d. Action on the findings is not required. However, the convening authority may, in his sole discretion:

(1) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(2) Set aside any finding of guilty and:

- (A) Dismiss the specification and, if appropriate, the charge; or
- (B) Direct a rehearing as discussed below.

e. Action on the sentence. The convening authority may, for any or no reason, disapprove a legal sentence in whole or in part, mitigate the sentence, and change a punishment to one of a different nature as long as the severity of the punishment is not increased. The convening or higher authority may not increase the punishment imposed by the court-martial. The approval or disapproval shall be explicitly stated.

f. Ordering rehearing or other trial. The convening authority may in the convening authority's discretion order a rehearing. A rehearing may be ordered as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only.

g. Contents of action and related matters.

(1) The convening authority shall state in writing and insert in the record of trial the convening authority's decision as to the sentence, whether any findings of guilty are disapproved, and orders as to further disposition. The action shall be signed personally by the convening authority.

(2) Modification of initial action. The convening authority may recall and modify any action taken by that convening authority at any time before it has been published or before the accused has been officially notified. The convening authority may also recall and modify any action at any time prior to forwarding the record for review, as long as the modification does not result in action less favorable to the accused than the earlier action.

(3) Findings of guilty. If any findings of guilty are disapproved, the action shall so state. If a rehearing is not ordered, the affected charges and specifications shall be dismissed by the convening authority in the action. If a rehearing or other trial is directed, the reasons for the disapproval shall be set forth in the action.

(4) Action on sentence.

(A) In general. The action shall state whether the sentence adjudged by the court-martial is approved. If only part of the sentence is approved, the action shall state which parts are approved. A rehearing may not be directed if any sentence is approved.

(B) Execution; suspension. The action shall indicate, when appropriate, whether an approved sentence is to be executed or whether the execution of all or any part of the sentence is to be suspended. No reasons need be stated.

(C) Credit for illegal pretrial confinement. When the military judge has directed that the accused receive credit under R.C.M. 305(k), the convening authority shall so direct in the action.

(D) Reprimand. The convening authority shall include in the action any reprimand which the convening authority has ordered executed.

h. Service on accused. A copy of the convening authority's action shall be served on the accused or on defense counsel. If the action is served on defense counsel, defense counsel shall, by expeditious means, provide the accused with a copy.

## 8-8. Clemency actions.

a. The imposing commander for NJP actions, a military judge, the convening authority for any court-martial, or next superior authority may, in accordance with the time prescribed in the MCM, perform certain clemency actions in regard to punishment adjudged against an offender.

### b. Suspension/vacation.

(1) Ordinarily, punishment is suspended to grant a probation period during which a member may show that he deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date imposed. A punishment may not be suspended for a period longer than six months from the suspension date. Further misconduct by the member, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment.

(2) A punishment, or portion of a punishment, may be suspended by the imposing adjudicator at the time the sentence is given. Suspended punishments may be directed at any appellate or review authority level.

(3) A commander/convening authority may vacate any suspended punishment, provided the punishment is of the type and amount he could impose and where the commander/convening authority has determined that the member has committed a misconduct (amounting to an offense under the FCMJ) during the suspension period. The commander/convening authority is not bound by the formal Rules of Evidence before courts-martial and may consider any matter, including unsworn statements, he reasonably believes to be relevant to the misconduct. There is no appeal for a decision to vacate a suspended sentence. Unless the vacation is prior to the expiration of the stated period of suspension, the suspended punishment is automatically remitted without further action. The death, discharge, or separation from service of the member punished prior to the expiration of the suspension automatically remits the suspended punishment. Misconduct resulting in the vacation of a suspended punishment may also be the basis for the imposition of non-judicial or judicial action.

(4) Commanders/convening authorities will observe the following procedures in determining whether to vacate suspended punishments. If the member is AWOL at the time the commander proposes vacation and remains so, the commander may, at his discretion, vacate the suspension without providing notice or any opportunity to respond.

### c. Mitigation.

(1) Mitigation is a reduction in either the quality or quantity of a punishment, e.g., a punishment of confinement for 20 days reduced to 10 days or to restriction for 20 days. The general nature of the punishment remains the same. The first action lessens the quantity and the second lessens the quality, with both mitigated punishments remaining of the same general nature as confinement, i.e., deprivation of liberty. However, a mitigation of 10 days confinement to 14 days restriction would not be permitted because the quantity has been increased.

(2) A fine may be mitigated to a lesser fine. A reduction may be mitigated to a fine. When mitigating a reduction to a fine, the amount of the fine imposed may not be greater than the amount that could have been imposed initially, based on the restored grade, by the officer who imposed the mitigated punishment.

(3) Mitigation is appropriate when:

(A) The recipient has, by his subsequent good conduct, merited a reduction in the severity of the punishment; or

(B) The punishment imposed was disproportionate to the offense of the offender.

d. Remission. This is an action whereby any portion of the unexecuted punishment is cancelled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted, but may be mitigated or set aside. The death, discharge, or separation from the service of the member punished remits any unexecuted punishment.

e. Setting aside and restoration.

(1) This is an action whereby the punishment, or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored; i.e., NJP or court-martial punishment is "wholly set aside" when the imposer of the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual.

(2) The basis for any set aside action is a determination that, under all circumstances of the case, the punishment has resulted in a "clear injustice". "Clear injustice" means that there exists an unwaived legal or factual error which clearly and affirmatively injured the substantial rights of the member. An example of "clear injustice" would be the discovery of new evidence unquestionably exculpating the member. "Clear injustice" does not include the fact that the member's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the member.

## 8-9. Disposition of the record of trial after action.

a. Records of trial for GCM, SPCM, and SCM proceedings will be retained by the SJA for the convening authority.

b. Records of trial, as well as all appellate records for cases appealed to the 1<sup>st</sup> DCA shall be retained by the OSJA, JFHQ-FL.

c. Records of trial will not be filed in the member's military personnel file.

(1) For FLARNG court-martial convictions, a DA Form 2-2 will be completed and placed in the Soldier's records. If the Soldier is acquitted of all charges, no record of the action will be filed.

(2) For FLANG court-martial convictions, the record of the court-martial will be filed in accordance with FLANG regulations and policies, and applicable AF requirements. One copy is also filed in the member's State Military Personnel Record maintained at State Headquarters.

## 8-10. Execution of sentences.

a. No sentence of a court-martial may be executed unless it has been approved by the convening authority.

(1) If any sentence imposes a fine, all sums of money collected shall be paid over at once by the officer collecting the fine to the commander of the unit to which the member belongs and be deposited in accordance with Section 250.40(5)(c)1, Fla. Stat.

(2) Pursuant to R.C.M. 1101, and Section 250.36(4), Fla. Stat., TAG-FL, or his designee, may order the accused into post-trial confinement when a sentence of confinement has been adjudged by a court-martial.

(3) If any sentence imposes confinement in a county jail, and the sentence of confinement is approved by the convening authority, it will be forwarded to TAG-FL, Attn: OSJA, for approval by TAG-FL, or his designee. No sentence of confinement will be executed until it is approved by TAG-FL, or his designee.

(A) Once a sentence of confinement is approved by TAG-FL a confinement warrant will be completed by the OSJA, JFHQ-FL, for signature by TAG-FL, or his designee, and forwarded to the commander of the accused for execution of the sentence.

(B) Once the commander has received the confinement warrant, an FNG 636 will be prepared (unless one was completed for pre-trial confinement), and these two

documents will be taken to the sheriff of the county where the accused resides for disposition.

b. The convening authority shall issue an order that directs that the approved sentence be carried out. No part of a sentence may be carried out until it is ordered executed.

c. Punishments which the convening authority may order executed in the initial action. Except as provided in paragraph 8-10d, below, the convening authority may order all or part of the sentence of a court-martial executed when the convening authority takes initial action under R.C.M. 1107.

d. Punishments which the convening authority may not order executed in the initial action.

(1) A BCD. A BCD may be ordered executed only by the convening authority after review by a JA.

(2) A dishonorable discharge or the dismissal of a commissioned officer. A dishonorable discharge or the dismissal of a commissioned officer, may be approved and ordered executed only by the Governor.

(3) All orders of confinement must be reviewed and approved by TAG-FL, or his designee, prior to execution.

e. Courts-Martial forfeitures. Sentences of courts-martial pertaining to forfeiture of pay that have been adjudged and approved in accordance with state law may be input for collection through manual payroll at the USP&FO Military Pay section. A DD 114, Military Pay Order, will be prepared in triplicate and forwarded to the USP&FO with a copy of the court-martial promulgating order for collection of forfeitures.

f. No accused shall be retained in confinement for a period longer than that to which he has been sentenced. In the event the period of confinement is later reduced, vacated, suspended, set aside or disapproved the accused shall be given credit for time served toward what confinement is finally approved. In the event of a complete reversal or disapproval of the sentence the accused shall be paid his base pay for each day spent in post-trial confinement as SAD less enlisted differential pay.

g. If the sentence of confinement resulting from a court-martial exceeds the accused's ETS date, that date will be extended to accommodate the sentence. The unit will initiate DA 4836, and involuntarily extend the sentenced individual for sufficient time to cover the sentence (See paragraphs 2-14d and 7-3d(2), NGR 600-200). This action can be accomplished while awaiting the execution of the confinement order from JFHQ-FL. The convening authority may notify and coordinate with DCSPER to facilitate the action or if any questions arise in this area.

## 8-11. Promulgating orders.

a. Orders promulgating the result of GCMs and SPCMs and the actions of the convening or higher authorities on the record shall be prepared, issued, and distributed as prescribed by the M.C.M. No promulgating order is issued for a SCM.

b. A promulgating order publishes the result of the court-martial and the convening authority's action and any later action taken on the case.

c. By whom issued.

(1) Initial orders. The order promulgating the result of trial and the initial action of the convening authority shall be issued by the convening authority.

(2) Orders issued after the initial action. Any action taken on the case subsequent to the initial action shall be promulgated in supplementary orders. The subsequent action and the supplementary order may be the same document if signed personally by the appropriate convening or higher authority.

d. Contents.

(1) In general. The order promulgating the initial action shall set forth: the type of court-martial and the command by which it was convened; the charges and specifications, or a summary thereof, on which the accused was arraigned; the accused's pleas; the findings or other disposition of each charge and specification; the sentence, if any; and the action of the convening authority, or a summary thereof.

(2) Dates. A promulgating order shall bear the date of the initial action, if any, of the convening authority. An order promulgating an acquittal, a court-martial terminated before findings, or action on the findings or sentence taken after the initial action of the convening authority shall bear the date of its publication. A promulgating order shall state the date the sentence was adjudged, the date on which the acquittal was announced, or the date on which the proceedings were otherwise terminated.

(3) Order promulgated regardless of the result of trial or nature of the action. An order promulgating the result of trial by GCM or SPCM shall be issued regardless of the result and regardless of the action of the convening or higher authorities.

e. Authentication. The promulgating order shall be authenticated by the signature of the convening or other competent authority acting on the case, or a person acting under the direction of such authority. A promulgating order prepared in compliance with this rule shall be presumed authentic.

Figure 8-1 – Sample Legal Officer’s Recommendation to the General Court-Martial Convening Authority (Page 1)

STATE OF FLORIDA  
DEPARTMENT OF MILITARY AFFAIRS  
Office of The Affairs  
State Arsenal, P.O. Box 1008  
St. Augustine, Florida 32085-1008

OSJA

22 June 2006

MEMORANDUM FOR The Adjutant General, General Court-Martial Convening Authority (GCMCA), FLNG

Subject: Legal Officer Recommendation to the GCMCA - State of Florida v. SGT John A. Doe, FLARNG

1. In accordance with RCM 1106, this recommendation is provided for your review as the GCMCA, prior to taking action under RCM 1107 on the Record of Trial governing the General Court Martial (GCM) held concerning SGT Doe.
2. Per the requirements of RCM 1106, the following information is provided for your review:
  - a. Pleas and Findings. On 15 Apr 06, SGT Doe entered a guilty plea during his GCM. The findings and sentence adjudged by the GCM are as follows:

CHARGE	SPECIFICATION	ARTICLE	PLEA	FINDING
I	The Specification	121	Guilty	Guilty
II	1	108	Guilty	Guilty
	2	108	Guilty	Guilty*

\* In Charge II, Specification 1, the amount of the larceny was determined to be \$375 during the guilty plea inquiry.

- b. Sentence. Following a sentencing hearing, the GCM panel of officers imposed a sentence of a Bad Conduct Discharge (BCD), confinement for 120 days, and reduction to the rank of E-1.
  - c. Clemency. No clemency recommendation was made by the sentencing authority.
  - d. Service Record of the Accused. SGT Doe’s service record is summarized as follows:

(1) SGT Doe joined the FLARNG on 11 Oct 01, at the age of 18, and has approximately 34 months of total service.

Sample Legal Officer's Recommendation to the General Court-Martial Convening Authority (Page 2)

OSJA

Subject: Legal Officer Recommendation to the GCMCA - State of Florida v. SGT John A. Doe, FLARNG

(2) SGT Doe's awards and decorations consist of the Army Service Ribbon, National Defense Service Medal, and the Global War on Terror Service Medal. SGT Doe served on Active Duty with the FLARNG for one year (Mar 02-Mar 03), in support of Operation Noble Eagle on airport security mission and an Honorable Discharge from active duty for his service.

(3) SGT Doe received an Article 15 in August 2004 for one charge (two specifications) of failure to repair to his appointed place of duty (Article 86, FCMJ) and one charge of wrongfully using marijuana on several occasions (Article 112a, FCMJ) between June 2003 and June 2004, and was reduced to the grade of SPC.

(4) SGT Doe received a Letter of Reprimand on 29 Sep 03 for failure to repair to his appointed place of duty, and dereliction of duty for sleeping on duty; and a letter of concern in April 2003 for gambling online on a government computer during the duty day.

e. There was no pretrial restraint and no pretrial agreement in this case.

f. I recommend that you approve the sentence adjudged by the GCM panel. The accused has submitted matters for your consideration in accordance with RCM 1105 and no other legal issues were raised that required action in this recommendation. Any and all matters submitted in accordance with RCM 1105 must be carefully considered by you prior to making a final determination on sentencing in this matter.

MARY C. JONES  
MAJ, JA, FLARNG  
Staff Judge Advocate

CF:  
COL Richard Brown, Military Judge  
LTC George White, Trial Counsel  
MAJ Jim Jones, Defense Counsel  
SGT John A. Doe

## CHAPTER 9 APPELLATE PROCEDURE

9-1. Courts-Martial appeals. Persons convicted at a GCM, SPCM, or SCM wherein imprisonment is approved as punishment, has a right to appeal that conviction to the 1<sup>st</sup> DCA. (See Section 250.35, Fla. Stat.) This chapter shall discuss the procedures to follow when an appeal is requested or required.

9-2. Rules of appellate procedure. Any appeal from a court-martial to the 1<sup>st</sup> DCA shall be in compliance with, and governed by, the current Florida Rules of Appellate Procedure (FRAP). To the extent that there is no conflict with the FRAP, the appellate procedures in the R.C.M. shall also be followed.

9-3. Appointment of appellate counsel.

a. Government appellate counsel. Unless otherwise directed, the OSJA, JFHQ-FL, shall represent the government in any court-martial appeal before the 1<sup>st</sup> DCA.

b. Appellate defense counsel. Appellate defense counsel shall be detailed to represent the accused in appeal before the 1<sup>st</sup> DCA.

(1) A detailed appellate defense counsel shall be appointed in the same manner as an appointment of defense counsel at court-martial.

(2) An accused may be assisted by civilian counsel obtained at no expense to the government.

9-4. Notice of appeal.

a. Once a sentence has been approved by the convening authority and the promulgating order and action has been issued, an accused has 30 calendar days in which he or she may file a notice of appeal.

b. The form of the notice shall be as prescribed in Rule 9.900(a), FRAP, and shall be served upon the trial counsel and the OSJA, JFHQ-FL, within the prescribed 30 days. (See sample Notice of Appeal for Appellate Court at Figure 9-1, Page 147.)

9-5. Record on appeal.

a. In all cases wherein an appeal occurs, a complete copy of the authenticated record, prepared in accordance with R.C.M. 1103, the SJA's recommendation, and copies of all matters submitted under R.C.M. 1105, shall be immediately forwarded to the OSJA, JFHQ-FL.

b. Upon issuance of the promulgating order and action by the convening authority, a copy shall be immediately sent to the OSJA, JFHQ-FL, for inclusion in the record on appeal.

c. The OSJA, JFHQ-FL, shall assemble the record on appeal in accordance with Rule 9.200, FRAP.

d. Within 50 days of an accused filing a notice of appeal, the OSJA, JFHQ-FL, shall serve a copy of the completed record on appeal on the accused and/or his appellate defense counsel and shall transmit the record on appeal to the Office of the Clerk for the 1<sup>st</sup> DCA. (See Rules 9.140(f) and (g), FRAP.)

#### 9-6. Briefs.

a. All initial briefs, answer briefs, and reply briefs shall comply with the requirements of Rule 9.210, FRAP and any other requirements of the FRAP.

b. Within 30 days of service of the record upon the parties, the accused (appellant) shall serve a copy of his initial brief on government appellate counsel, trial counsel, and file the appropriate copies with the clerk's office, 1<sup>st</sup> DCA. (See Rules 9.110(f) and 9.210(g), FRAP.)

c. The answer brief shall be filed by the government (appellee) within 20 days of service of the accused/appellant's initial brief. (See Rule 9.210(f), FRAP.)

d. The accused/appellant's reply brief, if filed, shall be filed within 20 days of service of the government's answer brief. (See Rule 9.210(f), FRAP.)

9-7. Oral argument. Requests for oral argument shall be made in accordance with the FRAP.

#### 9-8. Appeals by the government.

a. The dismissal of charges by a military judge that does not violate the constitutional rights of the accused may be appealed by the government to the 1<sup>st</sup> DCA. (See Section 250.35(10)(b), Fla. Stat.)

b. Notice of appeal. Once a final order dismissing the charges has been issued by the military judge, the trial counsel has 15 calendar days in which he may file a notice of appeal.

c. The form of the notice shall as prescribed in Rule 9.900(a), FRAP, and shall be served upon the accused, his defense counsel, and the OSJA, JFHQ-FL, within the prescribed 15 days.

d. Record on appeal. In appeals by the government, a complete copy of the authenticated record, prepared in accordance with R.C.M. 1103, shall be immediately forwarded to the OSJA, JFHQ-FL. The OSJA, JFHQ-FL, shall assemble the record on appeal in accordance with Rule 9.200, FRAP.

e. Within 50 days of an accused filing a notice of appeal, the OSJA, JFHQ-FL, shall serve a copy of the completed record on appeal on the accused and/or his defense counsel and shall transmit the record on appeal to the Office of the Clerk for the 1<sup>st</sup> DCA. (See Rules 9.140(f) and (g), FRAP.)

f. Within 30 days of service of the record on the parties, the government (appellant) shall serve a copy of its initial brief on the accused and/or his defense counsel, and file the appropriate copies with the Office of the Clerk, 1<sup>st</sup> DCA. (See Rules 9.110(f) and 9.210(g), FRAP.)

g. The answer brief shall be filed by the accused (appellee) within 20 days of service of the appellant's initial brief. (See Rule 9.210(f), FRAP.)

i. The appellant's reply brief, if filed, shall be filed within 20 days of service of the government's answer brief. (See Rule 9.210(f), FRAP.)

9-9. Additional appeals. Any appeal beyond those to the 1<sup>st</sup> DCA shall be governed by the applicable Rules of Court for that venue.

LEFT BLANK INTENTIONALLY

Figure 9-1 – Sample Notice of Appeal for Appellate Court

IN A GENERAL COURT-MARTIAL  
CONDUCTED BY THE FLORIDA  
NATIONAL GUARD AT CAMP  
BLANDING JOINT TRAINING CENTER,  
FLORIDA, BEFORE COL SUE  
ASPONTE, MILITARY JUDGE.

Court-Martial Convening Order No. 1 (February 1, 2005)

JOHN DOE, SSG,  
Defendant/Appellant,  
v.  
STATE OF FLORIDA  
Plaintiff/Appellee.

NOTICE OF APPEAL

NOTICE IS GIVEN that SSG John Doe, Defendant/Appellant, appeals to the First District Court of Appeal of Florida, the order of this court rendered on March 31, 2005, and approved by the convening authority on April 15, 2005. The nature of the order is a final order is a criminal conviction and sentence under the Florida Code of Military Justice.

RAY JUDICATA, MAJOR  
Attorney for Appellant  
4201 Grand Avenue  
Pinellas Park, Florida 33333  
Florida Bar No. 54321

LEFT BLANK INTENTIONALLY

CHAPTER 10  
AUTHENTICATION

All DA and DD forms set forth in this Regulation may be obtained on-line through JetForms or from Deputy Chief of Staff Information, ATTN: Forms and Publications Officer. All FNG Forms set forth in this Regulation are reproducible. A blank copy of each FNG form is provided in Appendix G of this Regulation. You should reproduce these forms when needed.

BY ORDER OF THE GOVERNOR:

DOUGLAS BURNETT  
Major General, FLANG  
The Adjutant General

OFFICIAL:

  
ELIZABETH C. MASTERS  
LTC, JA, FLARNG  
State Staff Judge Advocate

DISTRIBUTION:  
A, B

LEFT BLANK INTENTIONALLY

APPENDIX A  
AUTHORITY AND REFERENCES

1. Title 32, USC, Sections 326-333, inclusive.
2. Chapter 250, Fla. Stat., Sections 250.05, 250.31, and 250.35 through 250.39, inclusive (Florida Military Code).
3. MCM, 2002 ed.
4. UCMJ, (as contained in the MCM, 2002 ed.).
5. AR 27-10, Military Justice.
6. AR 27-17, Procedural Guide for Article 32(b) Investigating Officer.
7. AR 135-175 – Separation of Officers.
8. AR 135-178 – Separation of Enlisted Personnel.
9. Army Field Manual (AFM) 111-1, Military Justice Guide.
10. NGR 600-200, Enlisted Personnel Management.
11. Air Force Instruction (AFI) 36-2608, Military Personnel Records System.
12. AFI 36-3209 – Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members.
13. AFI 51-201 – Administration of Military Justice.
14. AFI 51-202 – Nonjudicial Punishment.
15. Air Force Manual (AFMAN) 51-203 – Records of Trial.

LEFT BLANK INTENTIONALLY

APPENDIX B  
SELECTED PUNITIVE ARTICLES OF THE FLORIDA CODE OF MILITARY JUSTICE  
(As adopted from the UCMJ)

This appendix contains the actual text of the more common punitive articles that may be applicable to the FLNG. The omission of any punitive article from this appendix does not render it inapplicable to the FLNG as the punitive articles of the UCMJ as a whole have been adopted as the FCMJ by Chapter 250 of the Florida Statutes.

Most articles in this appendix also contain a break-down of the elements of the particular offense that must be proven for conviction and sample language for use when completing the charge sheet (DD 458) or the ARNG or ANG NJP form.

The sample charging language is merely a guide for drafting charges and does not have to be followed verbatim. When drafting charges, the samples should be modified to meet the facts of the incident which caused charges to be filed, including the necessary facts shown in the sample specification (name, location, date, etc.).

For additional guidance, refer to the Manual for Courts-Martial (2002 edition) and also consult with your unit's JA for assistance as needed.

LEFT BLANK INTENTIONALLY

**ARTICLE 77 - PRINCIPALS -**

*Any person punishable under this chapter who -*

*(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or*

*(2) causes an act to be done which if directly performed by him would be punishable by this chapter; is a principal.*

**ARTICLE 78 - ACCESSORY AFTER THE FACT -**

*Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.*

Elements:

- (1) That an offense punishable by the code was committed by a certain person;
- (2) That the accused knew that this person had committed such offense;
- (3) That thereafter the accused received, comforted, or assisted the offender; and
- (4) That the accused did so for the purpose of hindering or preventing the apprehension, trial, or punishment of the offender.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), knowing that (at -location), on or about \_\_\_\_\_ 20\_\_\_\_, had committed an offense punishable by the Florida Code of Military Justice, to wit: \_\_\_\_\_ did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20\_\_\_\_, in order to (hinder) (prevent) the (apprehension) (trial) (punishment) of the said \_\_\_\_\_ (receive) (comfort) (assist) the said \_\_\_\_\_ by \_\_\_\_\_".*

**ARTICLE 79 - CONVICTION OF LESSER INCLUDED OFFENSES -**

*An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.*

**ARTICLE 80 - ATTEMPT -**

*(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.*

*(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.*

*(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.*

Elements:

- (1) That the accused did a certain overt act;
- (2) That the act was done with the specific intent to commit a certain offense under the code;
- (3) That the act amounted to more than mere preparation; and
- (4) That the act apparently tended to effect the commission of the intended offense.

**ARTICLE 81 - CONSPIRACY.**

*Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.*

Elements:

- (1) That the accused entered into an agreement with one or more persons to commit an offense under the code; and
- (2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20\_\_\_\_, conspire with \_\_\_\_\_ (and \_\_\_\_\_) to commit an offense under the Florida Code of Military Justice, to wit: (larceny of \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_), and in order to effect the object of the conspiracy the said \_\_\_\_\_ (and \_\_\_\_\_) did \_\_\_\_\_."*

**ARTICLE 82 - SOLICITATION.**

*(a) Any person subject to this chapter who solicits or advises another or other to desert in violation of Article 85 or mutiny in violation of Article 94 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.*

*(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Article 99 or sedition in violation of Article 94 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.*

Elements:

- (1) That the accused solicited or advised a certain person or persons to commit any of the four offenses named in Article 82; and
- (2) That the accused did so with the intent that the offense actually be committed.

*(Note: If the offense solicited or advised was attempted or committed, add the following element.)*

- (3) That the offense solicited or advised was (committed) (attempted) as the proximate result of the solicitation.

Sample specifications:

**For soliciting desertion (Article 85) or mutiny (Article 94):**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_, 20 \_\_, (a time of war) by (here state the manner and form of solicitation or advice), (solicit) (advise) \_\_\_\_\_ (and \_\_\_\_\_) to (desert in violation of Article 85) (mutiny in violation of Article 94)."*

**[Note: If the offense solicited or advised is attempted or committed. add the following at the end of the specification:]**

*"and as a result of such (solicitation) (advise), the offense (solicited) (advised) was, on or about \_\_\_\_\_, 20 \_\_, (at - location), (attempted) (committed) by \_\_\_\_\_ (and \_\_\_\_\_)."*

**For soliciting an act of misbehavior before the enemy (Article 99) or sedition (Article 94):**

*"In that \_\_\_\_\_ (personal jurisdiction data) did, (at - location), on or about \_\_\_\_\_ 20 \_\_, (a time of war) by (here state the manner and form of solicitation or advice), (solicit) (advise) \_\_\_\_\_ (and \_\_\_\_\_) to commit (an act of misbehavior before the enemy in violation of Article 99) (sedition in violation of Article 94)."*

**[Note: If the offense solicited or advised is committed add the following at the end of the specification:]**

*"and, as a result of such (solicitation) (advise), the offense (solicited) (advised) was, on or about \_\_\_\_\_ 20 \_\_, (at -location), committed by \_\_\_\_\_ (and \_\_\_\_\_)."*

**ARTICLE 83 - FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION.**

*Any person who:*

*(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or*

*(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;*

*shall be punished as a court-martial may direct.*

Elements:

- (1) Fraudulent enlistment or appointment.

(A) That the accused was enlisted or appointed in an armed force;

(B) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts regarding qualifications of the accused for enlistment or appointment;

(C) That the accused's enlistment or appointment was obtained or procured by that knowingly false representation or deliberate concealment; and

(D) That under this enlistment or appointment that accused received pay or allowances or both.

- (2) Fraudulent separation

(A) That the accused was separated from an armed force;

(B) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts about the accused's eligibility for separation; and

(C) That the accused's separation was obtained or procured by that knowingly false representation or deliberate concealment.

Sample specifications:

**For fraudulent enlistment or appointment:**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20 \_\_, by means of (knowingly false representations that (here state the fact or facts material to qualification for enlistment or appointment which were represented), when in fact (here state the true fact of facts (deliberate concealment of the fact that (here state the fact or facts disqualifying the accused for enlistment or appointment which were concealed, procure himself to be (enlisted as a \_\_\_\_\_) (appointed as a \_\_\_\_\_) in the (here state the armed force in which the accused procured the enlistment or appointment), and did thereafter, (at -location), receive (pay) (allowances) (pay and allowances) Under the enlistment) (appointment) so procured."*

**For fraudulent separation.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, by means of (knowingly false representations that (here state the fact or facts material to eligibility for separation which were represented), when in fact (here state the true fact or facts (deliberate concealment of the fact that (here state the fact or facts concealed which made the accused ineligible for separation, procure himself to be separated from the (here state the armed force from which the accused procured his separation))."

**ARTICLE 84 - EFFECTING UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION.**

*Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.*

Elements:

- (1) That the accused effected the enlistment, appointment, or separation of the person named;
- (2) That this person was ineligible for this enlistment, appointment, or separation because it was prohibited by law, regulation, or order; and
- (3) That the accused knew of the ineligibility at the time of the enlistment, appointment, or separation.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, effect (the (enlistment) (appointment) of as a \_\_\_\_\_ in (here state the armed force in which the person was enlisted or appointed) (the separation of \_\_\_\_\_ from (here state the armed force from which the person was separated), then well knowing that the said \_\_\_\_\_ was ineligible for such (enlistment) (appointment) (separation) because (here state facts whereby the enlistment, appointment, or separation was prohibited by law, regulation, or order)."

**ARTICLE 85 - DESERTION.****(a) Any member of the armed forces, is guilty of desertion, who:**

- (1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;**
- (2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or**
- (3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;**

**(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.**

**(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.**

Elements:

- (1) Desertion with intent to remain away permanently.

(A) That the accused absented himself or herself from his or her unit, organization, or place of duty;

(B) That such absence was without authority;

(C) That the accused, at the time the absence began or at some time during the absence, intended to remain away from his or her unit, organization, or place of duty permanently; and

(D) That the accused remained absent until the date alleged.

[Note: If the absence was terminated by apprehension, add the following element]

(E) That the accused's absence was terminated by apprehension.

- (2) Desertion with intent to avoid hazardous duty or to shirk important service.

(A) That the accused quit his or her unit, organization, or other place of duty;

(B) That the accused did so with the intent to avoid a certain duty or shirk a certain service;

(C) That the duty to be performed was hazardous or the service important;

(D) That the accused knew that he or she would be required for such duty or service; and

(E) That the accused remained absent until the date alleged.

- (3) Desertion before notice of acceptance of resignation.

(A) That the accused was a commissioned officer of an armed force of the United States, and had tendered his or her resignation;

(B) That before he or she received notice of the acceptance of the resignation the accused quit his or her post or proper duties;

(C) That the accused did so with the intent to remain away permanently from his or her post or proper duties; and

(D) That the accused remained absent until the date alleged.

[Note: If the absence was terminated by apprehension, add the following element].

(E) That the accused's absence was terminated by apprehension.

(4) Attempted desertion.

(A) That the accused did a certain overt act;

(B) That the act was done with the specific intent to desert;

(C) That the act amounted to more than mere preparation; and

(D) That the act apparently tended to effect the commission of the offense of desertion.

Sample specification:

**Desertion with intent to remain away permanently.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, on or about \_\_\_\_\_ 20\_\_, (a time of war) without authority and with intent to remain away therefrom permanently, absent himself from his (unit) (organization) (place of duty), to wit: \_\_\_\_\_, located at ( \_\_\_\_\_ ), and did remain so absent in desertion until (he was apprehended) on or about \_\_\_\_\_ 20\_\_."

**Desertion with intent to avoid hazardous duty or shirk important service.**

"In that \_\_\_\_\_ (personal jurisdiction date), did, on or about \_\_\_\_\_ 20\_\_, (a time of war) with intent to (avoid hazardous duty) (shirk important service), namely: \_\_\_\_\_, located at ( \_\_\_\_\_ ), and did remain so absent in desertion until on or about \_\_\_\_\_, 20\_\_."

**Desertion prior to acceptance of resignation.**

"In that \_\_\_\_\_ (personal jurisdiction data) having tendered his resignation and prior to due notice of the acceptance of the same, did, on or about \_\_\_\_\_ 20\_\_, (a time of war) without leave and with intent to remain away therefrom permanently, quit his (post) (proper duties), to wit: \_\_\_\_\_, and did remain so absent in desertion until (he was apprehended) on or about \_\_\_\_\_ 20\_\_."

**Attempted desertion.**

"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location), on or about \_\_\_\_\_ 20\_\_, (a time of war) attempt to (absent himself from his (unit) (organization) (place of duty) to wit: \_\_\_\_\_, without authority and with intent to remain away therefrom permanently quit his (unit) (organization) (place of duty), to wit: \_\_\_\_\_, located at \_\_\_\_\_, with intent to (avoid hazardous duty) (shirk important service) namely \_\_\_\_\_) ( \_\_\_\_\_ )."

**ARTICLE 86 - ABSENCE WITHOUT LEAVE.**

*Any member of the armed forces who, without authority.*

(1) *fails to go to his appointed place of duty at the time prescribed;*

(2) *goes from that place; or*

(3) *absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct.*

Elements:

(1) Failure to go to appointed place of duty.

(A) That a certain authority appointed a certain time and place of duty for the accused;

(B) That the accused knew of that time and place; and

(C) That the accused, without authority, failed to go to the appointed place of duty at the time prescribed.

(2) Going from appointed place of duty.

(A) That a certain authority appointed a certain time and place of duty for the accused;

(B) That the accused knew of that time and place; and

(C) That the accused, without authority, went from the appointed place of duty after having reported at such place.

(3) Absence from unit, organization, or place of duty.

(A) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;

(B) That the absence was without authority from anyone competent to give him or her leave; and

(C) That the absence was for a certain period of time.

[Note: If the absence was terminated by apprehension, add the following element.]

(D) That the absence was terminated by apprehension.

Sample specifications:

**Failing to go or leaving place of duty.**

"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location), on or about \_\_\_\_\_ 20\_\_, without authority, (fail to go at the time prescribed to) (go from) his/her appointed place of duty, to wit: (here set forth the appointed place of duty)."

**Absence from unit, organization, or place of duty.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, on or about \_\_\_\_\_ 20\_\_\_\_, without authority I absent himself from his (unit) (organization) (place of duty at which he was required to be), to wit: \_\_\_\_\_, located at \_\_\_\_\_, and did remain so absent until (he was apprehended) on or about \_\_\_\_\_ 20\_\_\_\_."

**Absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, on or about \_\_\_\_\_ 20\_\_\_\_, without authority and with intent to avoid (maneuvers) (field exercises), absent himself from his (unit) (organization) (place of duty at which he was required to be), to wit: \_\_\_\_\_ located at ( \_\_\_\_\_), and did remain so absent until on or about \_\_\_\_\_ 20\_\_\_\_."

**Abandoning watch or guard.**

"In that \_\_\_\_\_ (personal jurisdiction data), being a member of the \_\_\_\_\_ (guard) (watch) (duty section), did, (at -location), on or about \_\_\_\_\_ 20\_\_\_\_, without authority, go from his (guard) (watch) (duty section) (with intent to abandon the same)."

**ARTICLE 87 - MISSING MOVEMENT.**

**Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.**

Elements:

- (1) That the accused was required in the course of duty to move with a ship, aircraft or unit;
- (2) That the accused knew of the prospective movement of the ship, aircraft or unit;
- (3) That the accused missed the movement of the ship, aircraft or unit; and
- (4) That the accused missed the movement through design or neglect.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, through (neglect) (design) miss the movement of (Aircraft No. \_\_\_\_\_) (Flight \_\_\_\_\_) (the USS \_\_\_\_\_) (Company A, 1st Battalion, 7th Infantry) ( \_\_\_\_\_) with which he was required in the course of duty to move."

**ARTICLE 88 - CONTEMPT TOWARD OFFICIALS.**

**Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of**

**Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.**

Elements:

- (1) That the accused was a commissioned officer of the United States armed forces;
  - (2) That the accused used certain words against an official or legislature named in the article;
  - (3) That by an act of the accused these words came to the knowledge of a person other than the accused; and
  - (4) That the words used were contemptuous, either in themselves or by virtue of the circumstances under which they were used.
- [Note: If the words were against a Governor or legislature, add the following element.]
- (5) That the accused was then present in the State, Territory, Commonwealth, or possession of the Governor or legislature concerned.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, [use (orally and publicly) ( \_\_\_\_\_) the following contemptuous words] [in a contemptuous manner, use (orally and publicly) ( \_\_\_\_\_) the following words] against the [(President) (Vice President) (Congress) (Secretary of)] [(Governor) (legislature) of the (State of \_\_\_\_\_) (Territory of \_\_\_\_\_) ( \_\_\_\_\_), a (State) (Territory) in which he, the said \_\_\_\_\_, was then (on duty), (present)], to wit: " \_\_\_\_\_," or words to that effect."

**ARTICLE 89 - DISRESPECT TOWARD A SUPERIOR COMMISSIONED OFFICER.**

**Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.**

Elements:

- (1) That the accused did or omitted certain acts or used certain language to or concerning a certain commissioned officer;
- (2) That such behavior or language was directed toward that officer;
- (3) That the officer toward whom the acts, omissions, or words were directed was the superior commissioned officer of the accused;
- (4) That the accused then knew that the commissioned officer toward whom the acts, omissions, or words were directed was the accused's superior commissioned officer; and

(5) That, under the circumstances, the behavior or language was disrespectful to that commissioned officer.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20 \_\_, behave himself with disrespect toward \_\_\_\_\_, his superior commissioned officer, then known by the said \_\_\_\_\_ to be his superior commissioned officer, by (saying to him " \_\_\_\_\_," or words to that effect) (contemptuously turning from and leaving him while he, the said \_\_\_\_\_, was talking to him, the said \_\_\_\_\_."

**ARTICLE 90 - ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.**

*Any person subject to this chapter who:*

**(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or**

**(2) willfully disobeys a lawful command of his superior commissioned officer;**

**shall be punished . . . by such punishment . . . as a court-martial may direct.**

Elements:

(1) Striking or assaulting superior commissioned officer.

(A) That the accused struck, drew, or lifted up a weapon against, or offered violence against, a certain commissioned officer;

(B) That the officer was the superior commissioned officer of the accused;

(C) That the accused then knew that the officer was the accused's superior commissioned officer; and

(D) That the superior commissioned officer was then in the execution of office.

(2) Disobeying superior commissioned officer.

(A) That the accused received a lawful command from a certain commissioned officer;

(B) That this officer was the superior commissioned officer of the accused;

(C) That the accused then knew that this officer was the accused's superior commissioned officer; and

(D) That the accused willfully disobeyed the lawful command.

Sample specifications:

**Striking superior commissioned officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on about- location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, strike \_\_\_\_\_, his superior commissioned officer, then known by the said \_\_\_\_\_"

\_\_\_\_\_ to be his superior commissioned officer, who was then in the execution of his office, (in) (on) the \_\_\_\_\_ with (a) (his) \_\_\_\_\_."

**Drawing or lifting up a weapon against superior commissioned officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, (a time of war) (draw) lift up) a weapon, to wit: a \_\_\_\_\_, against \_\_\_\_\_, his superior commissioned officer, then known by the said \_\_\_\_\_ to be his superior commissioned officer, who was then in the execution of his office."

**Offering violence to superior commissioned officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_ offer violence against \_\_\_\_\_, his superior commissioned officer, then known by the said \_\_\_\_\_ to be his superior commissioned officer, who was then in the execution of his office, by \_\_\_\_\_."

**Willful disobedience of superior commissioned officer.**

"In that \_\_\_\_\_ (personal jurisdiction date, having received a lawful command from commissioned officer \_\_\_\_\_, his superior commissioned officer, then known by the said \_\_\_\_\_ to be his superior commissioned officer, to \_\_\_\_\_, or words to that effect, did, (at -location), on or about \_\_\_\_\_, 20 \_\_, willfully disobey the same."

**ARTICLE 91 - INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER, NONCOMMISSIONED OFFICER, OR PETTY OFFICER.**

*Any warrant officer or enlisted member who:*

**(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;**

**(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or**

**(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer. noncommissioned officer, or petty officer while that officer is in the execution of his office; shall be punished as a court-martial may direct.**

Elements:

(1) Striking or assaulting warrant, noncommissioned, or petty officer.

(A) That the accused was a warrant officer or enlisted member;

(B) That the accused struck or assaulted a certain warrant, noncommissioned, or petty officer;

(C) That the striking or assault was committed while the victim was in the execution of office; and

(D) That the accused then knew that the person struck or assaulted was a warrant, noncommissioned, or petty officer.

[Note: If the victim was the superior noncommissioned or petty officer of the accused, add the following elements.]

(E) That the victim was the superior noncommissioned, or petty officer of the accused; and

(F) That the accused then knew that the person struck or assaulted was the accused's superior noncommissioned, or petty officer.

(2) Disobeying a warrant, noncommissioned; or petty officer.

(A) That the accused was a warrant officer or enlisted member;

(B) That the accused received a certain lawful order from a certain warrant, noncommissioned, or petty officer;

(C) That the accused then knew that the person giving the order was a warrant, noncommissioned, or petty officer;

(D) That the accused had a duty to obey the order; and

(E) That the accused willfully disobeyed the order.

(3) Treating with contempt or being disrespectful in language or deportment toward a warrant, non-commissioned; or petty officer.

(A) That the accused was a warrant officer or enlisted member;

(B) That the accused did or omitted certain acts, or used certain language;

(C) That such behavior or language was used toward and within sight or hearing of a certain warrant, noncommissioned, or petty officer;

(D) That the accused then knew that the person toward whom the behavior or language was directed was a warrant, noncommissioned, or petty officer;

(E) That the victim was then in the execution of office; and

(F) That under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to said warrant, noncommissioned, or petty officer.

[Note: If the victim was the superior noncommissioned, or petty officer of the accused, add the following elements.]

(G) That the victim was the superior noncommissioned, or petty officer of the accused; and

(H) That the accused then knew that the person toward whom the behavior or language was directed was the accused's superior noncommissioned, or petty officer.

Sample specifications:

**Striking or assaulting warrant, noncommissioned; or petty officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (strike) (assault) \_\_\_\_\_, a \_\_\_\_\_ officer, then known to the said \_\_\_\_\_ to be a (superior) officer who was then in the execution of his office, by \_\_\_\_\_ him (in) (on) (the \_\_\_\_\_) with (a) \_\_\_\_\_ (his) \_\_\_\_\_."

**Willful disobedience of warrant, noncommissioned, or petty officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), having received a lawful order from \_\_\_\_\_, a \_\_\_\_\_ officer, then known by the said \_\_\_\_\_ to be a \_\_\_\_\_ officer, to \_\_\_\_\_, an order which it was his duty to obey, did (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, willfully disobey the same."

**Contempt or disrespect toward warrant, noncommissioned, or petty officer.**

"In that \_\_\_\_\_ (personal jurisdiction data) (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, [did treat with contempt] [was disrespectful in (language) (deportment) toward], a \_\_\_\_\_ officer, then known by the said \_\_\_\_\_ to be a (superior) \_\_\_\_\_ officer, who was then in the execution of his office, by (saying to him, " \_\_\_\_\_", or words to that effect) (spitting at his feet) ( \_\_\_\_\_)."

**ARTICLE 92 - FAILURE TO OBEY ORDER OR REGULATION.**

*Any person subject to this chapter who-*

**(1) violates or fails to obey any lawful general order or regulation;**

**(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or**

**(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.**

Elements:

(1) Violation of or failure to obey a lawful general order or regulation.

(A) That there was in effect a certain lawful general order or regulation;

(B) That the accused had a duty to obey it; and

(C) That the accused violated or failed to obey the order or regulation.

(2) Failure to obey other lawful order.

(A) That a member of the armed forces issued a certain lawful order;

(B) That the accused had knowledge of the order;

(C) That the accused had a duty to obey the order; and

(D) That the accused failed to obey the order.

(3) Dereliction in the performance of duties.

(A) That the accused had certain duties;

(B) That the accused knew or reasonably should have known of the duties; and

(C) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

Sample specifications:

**Violation or failure to obey lawful general order or regulation.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (violate) (fail to obey) a lawful general (order) (regulation), to wit: (paragraph \_\_\_\_\_, (Army) (Air Force) Regulation \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ by (wrongfully) \_\_\_\_\_."

**Violation or failure to obey other lawful written order.**

In that \_\_\_\_\_ (personal jurisdiction data), having knowledge of a lawful order issued by \_\_\_\_\_, to wit: (paragraph \_\_\_\_\_, ( \_\_\_\_\_) the Combat Group Regulation No. \_\_\_\_\_, Regulation \_\_\_\_\_), dated \_\_\_\_\_ ( \_\_\_\_\_), an order which it was his duty to obey, did, (at -location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_, 20\_\_\_\_, fail to obey the same by (wrongfully) \_\_\_\_\_."

**Failure to obey other lawful order.**

"In that \_\_\_\_\_, (personal jurisdiction data) having knowledge of a lawful order issued by \_\_\_\_\_ (to submit to certain medical treatment) (to \_\_\_\_\_) (not to \_\_\_\_\_), an order which it was his duty to obey, did (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, fail to obey the same by (wrongfully) \_\_\_\_\_."

**Dereliction in the performance of duties.**

"In that \_\_\_\_\_, (personal jurisdiction data), who (knew) (should have known) of his duties (at -location) (subject-matter jurisdiction data, if required), (on or about \_\_\_\_\_ 20\_\_\_\_) (from about \_\_\_\_\_ 20\_\_\_\_ to about \_\_\_\_\_ 20\_\_\_\_), was derelict in the performance of those duties in that he (negligently) (willfully) (by culpable inefficiency) failed \_\_\_\_\_, as it was his duty to do."

**ARTICLE 93 - CRUELTY AND MALTREATMENT.**

*Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.*

Elements:

(1) That a certain person was subject to the orders of the accused; and

(2) That the accused was cruel toward, or oppressed, or maltreated that person.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), (at -location) (subject- matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (was cruel toward) (did (oppress) (maltreat, a person subject to his orders, by (kicking him in the stomach) (confining him for twenty-four hours without water) ( \_\_\_\_\_)."

**ARTICLE 94 - MUTINY AND SEDITION.**

*Any person subject to this chapter who:*

(1) *with intent to usurp or override lawful military authority, refuse, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;*

(2) *with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;*

(3) *fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.*

(4) *A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.*

Elements:

(1) Mutiny by creating violence or disturbance.

(A) That the accused created violence or a disturbance; and

(B) That the accused created this violence or disturbance with intent to usurp or override lawful military authority.

## (2) Mutiny by refusing to obey orders or perform duty.

(A) That the accused refused to obey orders or otherwise do the accused's duty;

(B) That the accused in refusing to obey orders or perform duty acted in concert with another person or persons; and

(C) That the accused did so with intent to usurp or override lawful military authority.

## (3) Sedition.

(A) That the accused created revolt, violence, or disturbance against lawful civil authority;

(B) That the accused acted in concert with another person or persons; and

(C) That the accused did so with the intent to cause the overthrow or destruction of that authority.

## (4) Failure to prevent and suppress a mutiny or sedition.

(A) That an offense of mutiny or sedition was committed in the presence of the accused; and

(B) That the accused failed to do the accused's utmost to prevent and suppress the mutiny or sedition.

## (5) Failure to report a mutiny or sedition.

(A) That an offense of mutiny or sedition occurred;

(B) That the accused knew or had reason to believe that the offense was taking place; and

(C) That the accused failed to take all reasonable means to inform the accused's superior commissioned officer or commander of the offense.

## (6) Attempted mutiny.

(A) That the accused committed a certain overt act;

(B) That the act was done with specific intent to commit the offense of mutiny;

(C) That the act amounted to more than mere preparation; and

(D) That the act apparently tended to effect the commission of the offense of mutiny.

Sample specifications:**Mutiny by creating violence or disturbance.**

"In that \_\_\_\_\_ (personal jurisdiction data), with intent to (usurp) (override) (usurp and override) lawful military authority, did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, create (violence) (a disturbance) by (attacking the officers of the said ship) (barricading himself in Barracks T7, firing his rifle at \_\_\_\_\_, and exhorting others persons to join him in defiance of \_\_\_\_\_."

**Mutiny by refusing to obey orders or perform duties.**

"In that \_\_\_\_\_ (personal jurisdiction data), with intent to (usurp) (override) (usurp and override) lawful military authority, did, (at - location) on or about \_\_\_\_\_ 20\_\_\_\_, refuse, in concert with \_\_\_\_\_ (and \_\_\_\_\_) (others whose names are unknown), to (obey the orders of \_\_\_\_\_ to \_\_\_\_\_) (perform his duty as \_\_\_\_\_)."

**Sedition.**

"In that \_\_\_\_\_ (personal jurisdiction data), with intent to cause the (overthrow) (destruction) (overthrow and destruction) of lawful civil authority, to wit: \_\_\_\_\_, did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, in concert with (\_\_\_\_\_) and (\_\_\_\_\_) (others whose names are unknown), create (revolt) (violence) (a disturbance) against such authority by (entering the Town Hall of \_\_\_\_\_ and destroying property and records therein) (marching upon and compelling the surrender of the police of \_\_\_\_\_) (\_\_\_\_\_)."

**Failure to prevent and suppress a mutiny or sedition.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, fail to do his utmost to prevent and suppress a (mutiny) (sedition) among the (Soldiers) (Airmen) (\_\_\_\_\_) of \_\_\_\_\_, which (mutiny) (sedition) was being committed in his presence, in that (he took no means to compel the dispersal of the assembly) (he made no effort to assist \_\_\_\_\_ who was attempting to quell the mutiny) (\_\_\_\_\_)."

**Failure to report a mutiny or sedition.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, fail to take all reasonable means to inform his superior commissioned officer or his commander of a (mutiny) (sedition) among the (Soldiers) (Airmen) (\_\_\_\_\_) of \_\_\_\_\_, which (mutiny) (sedition) he, the said \_\_\_\_\_ (knew) (had reason to believe) was taking place."

**Attempted mutiny.**

"In that \_\_\_\_\_ (personal jurisdiction data), with intent to (usurp) (override) (usurp and override) lawful military authority, did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, attempt to (create (violence) (a disturbance) by \_\_\_\_\_) (\_\_\_\_\_)."

**ARTICLE 95 - RESISTANCE, FLIGHT, BREACH OF ARREST, AND ESCAPE.**

*Any person subject to this chapter who-*

- (1) *resists apprehension;*
- (2) *flees from apprehension;*
- (3) *breaks arrest; or*
- (4) *escapes from custody or confinement;*

*shall be punished as a court-martial may direct.*

Elements:

- (1) Resisting apprehension.
  - (A) That a certain person attempted to apprehend the accused;
  - (B) That said person was authorized to apprehend the accused; and
  - (C) That the accused actively resisted the apprehension.
- (2) Flight from apprehension.
  - (A) That a certain person attempted to apprehend the accused;
  - (B) That said person was authorized to apprehend the accused; and
  - (C) That the accused fled from the apprehension.
- (3) Breaking arrest.
  - (A) That a certain person ordered the accused into arrest;
  - (B) That said person was authorized to order the accused into arrest; and
  - (C) That the accused went beyond the limits of arrest before being released from that arrest by proper authority.
- (4) Escape from custody.
  - (A) That a certain person apprehended the accused;
  - (B) That said person was authorized to apprehend the accused; and
  - (C) That the accused freed himself or herself from custody before being released by proper authority.
- (5) Escape from confinement.
  - (A) That a certain person ordered the accused into confinement;
  - (B) That said person was authorized to order the accused into confinement; and
  - (C) That the accused freed himself or herself from confinement before being released by proper authority.

Sample specifications:

**Resisting apprehension.**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, resist being apprehended by \_\_\_\_\_, (an armed forces policeman) (\_\_\_\_\_), a person authorized to apprehend the accused."*

**Flight from apprehension.**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, flee apprehension by \_\_\_\_\_, (an armed force policeman) (\_\_\_\_\_), a person authorized to apprehend the accused."*

**Breaking arrest.**

*"In that \_\_\_\_\_ (personal jurisdiction data), having been placed in arrest (in quarters) (in his company area) (\_\_\_\_\_) by a person authorized to order the accused into arrest, did, (at - location) on or about \_\_\_\_\_ 20\_\_\_\_, break said arrest."*

**Escape from custody.**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, escape from the custody of \_\_\_\_\_, a person authorized to apprehend the accused."*

**ARTICLE 96 - RELEASING PRISONER WITHOUT PROPER AUTHORITY.**

*Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.*

Elements:

- (1) Releasing a prisoner without proper authority.
  - (A) That a certain prisoner was committed to the charge of the accused; and
  - (B) That the accused released the prisoner without proper authority.
- (2) Suffering a prisoner to escape through neglect.
  - (A) That a certain prisoner was committed to the charge of the accused;
  - (B) That the prisoner escaped;

(C) That the accused did not take such care to prevent the escape as a reasonably careful person, acting in the capacity in which the accused was acting, would have taken in the same or similar circumstances; and

(D) That the escape was the proximate result of the neglect.

(3) Suffering a prisoner to escape through design.

(A) That a certain prisoner was committed to the charge of the accused;

(B) That the design of the accused was to suffer the escape of that prisoner;

(C) That the prisoner escaped as a result of the carrying out of the design of the accused.

Sample specifications:

**Releasing a prisoner without proper authority.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at location), on or about \_\_\_\_\_, 20\_\_\_\_, without proper authority, release \_\_\_\_\_, a prisoner committed to his charge."

**Suffering a prisoner to escape through neglect or design.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at location), on or about \_\_\_\_\_ 20\_\_\_\_, through (neglect) (design), suffer \_\_\_\_\_, a prisoner committed to his charge, to escape."

**ARTICLE 97 - UNLAWFUL DETENTION.**

*Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.*

Elements:

- (1) That the accused apprehended, arrested, or confined a certain person; and
- (2) That the accused unlawfully exercised the accused's authority to do so.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at location), on or about \_\_\_\_\_ 20\_\_\_\_, unlawfully (apprehended \_\_\_\_\_) (place \_\_\_\_\_ in arrest) (confine \_\_\_\_\_ in \_\_\_\_\_)."

**ARTICLE 98 - NONCOMPLIANCE WITH PROCEDURAL RULES.**

*Any person subject to this chapter who-*

- (1) *is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or*

***(2) Knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct.***

Elements:

(1) Unnecessary delay in disposing of case.

(A) That the accused was charged with a certain duty in connection with the disposition of a case of a person accused of an offense under the code;

(B) That the accused knew that the accused was charged with this duty;

(C) That delay occurred in the disposition of the case;

(D) That the accused was responsible for the delay; and

(E) That, under the circumstances, the delay was unnecessary.

(2) Knowingly and intentionally failing to enforce or comply with provisions of the code.

(A) That the accused failed to enforce or comply with a certain provision of the code regulating a proceeding before, during, or after a trial;

(B) That the accused had the duty of enforcing or complying with that provision of the code;

(C) That the accused knew that the accused was charged with this duty; and

(D) That the accused's failure to enforce or comply with that provision was intentional.

Sample specifications:

**Unnecessary delay in disposing of case.**

"In that \_\_\_\_\_ (personal jurisdiction data), being charged with the duty of ((investigating) (taking immediate steps to determine the proper disposition of) charges preferred against \_\_\_\_\_, a person accused of an offense under the Florida Code of Military Justice) (\_\_\_\_\_), was, (at -location), on or about \_\_\_\_\_ 20\_\_\_\_, responsible for unnecessary delay in (investigating said charges (\_\_\_\_\_)) (determining the proper disposition of said charges (\_\_\_\_\_)), in that he (did \_\_\_\_\_) (failed to \_\_\_\_\_)."

**Knowingly and intentionally failing to enforce or comply with provisions of the code.**

"In that \_\_\_\_\_ (personal jurisdiction data), being charged with the duty of \_\_\_\_\_, did, (at -location), on or about \_\_\_\_\_ 20\_\_\_\_, knowingly and intentionally fail to (enforce) (comply with) Article \_\_\_\_\_, Florida Code of Military Justice, in that he \_\_\_\_\_."

**ARTICLE 99 - MISBEHAVIOR BEFORE THE ENEMY - OMITTED**

**ARTICLE 100 - SUBORDINATE COMPELLING SURRENDER - OMITTED**

**ARTICLE 101 - IMPROPER USE OF COUNTERSIGN - OMITTED.**

**ARTICLE 102 - FORCING A SAFEGUARD - OMITTED.**

**ARTICLE 103 - CAPTURED OR ABANDONED PROPERTY - OMITTED.**

**ARTICLE 104 - AIDING THE ENEMY - OMITTED.**

**ARTICLE 105 - MISCONDUCT AS A PRISONER - OMITTED.**

**ARTICLE 106 - SPIES – OMITTED.**

**ARTICLE 106A - ESPIONAGE – OMITTED.**

**ARTICLE 107 - FALSE OFFICIAL STATEMENTS.**

*Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.*

Elements:

- (1) That the accused signed a certain official document or made a certain official statement;
- (2) That the document or statement was false in certain particulars;
- (3) That the accused knew it to be false at the time of signing it or making it; and
- (4) That the false document or statement was made with the intent to deceive.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_ with intent to deceive, (sign an official (record) (return) ( \_\_\_\_\_ ), to wit: \_\_\_\_\_) (make to \_\_\_\_\_, an official statement, to wit: ( \_\_\_\_\_ ), which (record) (return) (statement) ( \_\_\_\_\_ ) was (totally false) (false in that ( \_\_\_\_\_ ), and was then known by the said \_\_\_\_\_ to be so false."*

**ARTICLE 108 - MILITARY PROPERTY OF THE UNITED STATES-SALE, LOSS, DAMAGE, DESTRUCTION, OR WRONGFUL DISPOSITION.**

*Any person subject to this chapter who, without proper authority-*

- (1) *sells or otherwise disposes of;*
- (2) *willfully or through neglect damages, destroys, or loses; or*
- (3) *willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of, any military property of the United States, shall be punished as a court-martial may direct.*

Elements:

- (1) Selling or otherwise disposing of military property.
  - (A) That the accused sold or otherwise disposed of certain property (which was a firearm or explosive);
  - (B) That the sale or disposition was without proper authority;
  - (C) That the property was military property of the United States; and
  - (D) That the property was of a certain value.
- (2) Damaging. destroying. or losing military property.
  - (A) That the accused, without proper authority, damaged or destroyed certain property in a certain way. or lost certain property;
  - (B) That the property was military property of the United States;
  - (C) That the damage, destruction. or loss was willfully caused by the accused or was the result of neglect by the accused; and
  - (D) That the property was of a certain value or the damage was of a certain amount.
- (3) Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.
  - (A) That certain property (which was a firearm or explosive) was lost, damaged, destroyed, sold, or wrongfully disposed of;
  - (B) That the property was military property of the United States;
  - (C) That the loss, damage, destruction, sale, or wrongful disposition was suffered by the accused, without proper authority, through a certain omission of duty by the accused;
  - (D) That the omission was willful or negligent; and
  - (E) That the property was of a certain value or the damage was of a certain amount.

Sample specifications:**Selling or disposing of military property.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, without proper authority, (sell to \_\_\_\_\_) (dispose of by \_\_\_\_\_), (a firearm) (an explosive)) of a value of (about) \$ \_\_\_\_\_, military property of the United States."

**Damaging, destroying, or losing military property.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, without proper authority, ((willfully) (through neglect)) ((damage by \_\_\_\_\_) (destroy by \_\_\_\_\_) (lose) \_\_\_\_\_) (of a value of (about) \$ \_\_\_\_\_,) military property of the United States (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_)."

**Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, without proper authority, (willfully) (through neglect) suffer \_\_\_\_\_, ((a firearm) (an explosive)) (of a value of (about) \$ \_\_\_\_\_) military property of the United States, to be (lost) (damaged by \_\_\_\_\_) (destroyed by \_\_\_\_\_) (sold to \_\_\_\_\_) (wrongfully disposed of by \_\_\_\_\_) (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_)."

**ARTICLE 109 - PROPERTY OTHER THAN MILITARY PROPERTY OF THE UNITED STATES-WASTE, SPOILAGE, OR DESTRUCTION.**

*Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.*

Elements:

- (1) Wasting or spoiling of non-military property.
  - (A) That the accused willfully or recklessly wasted or spoiled certain real property in a certain manner;
  - (B) That the property was that of another person; and
  - (C) That the property was of a certain value.
- (2) Destroying or damaging non-military property.
  - (A) That the accused willfully and wrongfully destroyed or damaged certain personal property in a certain manner;
  - (B) That the property was that of another person; and
  - (C) That the property was of a certain value or the damage was of a certain amount.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, ((willfully) recklessly) waste ((willfully) (recklessly) spoil) (willfully and wrongfully (destroy) (damage) by \_\_\_\_\_), (of a value of (about) \$ \_\_\_\_\_) (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_), the property of \_\_\_\_\_."

**ARTICLE 110 - IMPROPER HAZARDING OF VESSEL - OMITTED.****ARTICLE 111 - DRUNKEN OR RECKLESS OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL - OMITTED****ARTICLE 112 - DRUNK ON DUTY.**

*Any person subject to this chapter other than sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.*

Elements:

- (1) That the accused was on a certain duty; and
- (2) That the accused was found drunk while on this duty.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), was, (at -location), on or about \_\_\_\_\_ 20\_\_\_\_, found drunk while on duty as \_\_\_\_\_".

**ARTICLE 112A - WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES.**

*(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (2), below, shall be punished as a court-martial may direct.*

*(b) The substances referred to in subsection (1), above, are the following:*

*(1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana, and any compound or derivative of any such substance.*

*(2) Any substance not specified in clause (a) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.*

(3) Any other substance not specified in clause (a) or contained on a list prescribed by the President under clause (b) that is listed in Schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C.812).

Elements:

- (1) Wrongful possession of controlled substance. (A) That the accused possessed a certain amount of a controlled substance; (B) That the possession by the accused was wrongful
(2) Wrongful use of controlled substance. (A) That the accused used a controlled substance; and (B) That the use by the accused was wrongful
(3) Wrongful distribution of controlled substance. (A) That the accused distributed a certain amount of a controlled substance; (B) That the distribution by the accused was wrongful.
(4) Wrongful introduction of a controlled substance. (A) That the accused introduced onto a vessel, aircraft, vehicle, or installation used by the armed forces or under the control of the armed forces a certain amount of a controlled substance; and (B) That the introduction was wrongful.
(5) Wrongful manufacture of a controlled substance. (A) That the accused manufactured a certain amount of a controlled substance; and (B) That the manufacture was wrongful.
(6) Wrongful possession, manufacture or introduction of a controlled substance with intent to distribute. (A) That the accused (possessed) (manufactured) (introduced) a certain amount of a controlled substance; (B) That the (possession) (manufacture) (introduction) was wrongful; and (C) That the (possession) (manufacture) (introduction) was with the intent to distribute.

Sample specifications:

Wrongful possession, manufacture, or distribution of controlled substance.

"In that (personal jurisdiction data) did, (at - location) (subject-matter jurisdiction data, if required), on or about 20, wrongfully (possess) (distribute) (manufacture) (grams) (ounces) (pounds) of (a schedule) controlled

substance), (with the intent to distribute the said controlled substance) (while on duty as a sentinel or lookout) (while on board a vessel/aircraft) (in or at a missile launch facility) Used by the armed forces or under the control of the armed forces, to wit: ( )."

Wrongful use of controlled substance.

"In that (personal jurisdiction data) did, (at - location) (subject-matter jurisdiction data, if required), on or about 20, wrongfully use (a schedule controlled substance) (while on duty as a sentinel or lookout) (while (on board a vessel/aircraft) (in or at a missile launch facility) Used by the armed forces or under the control of the armed forces, to wit: ( )."

Wrongful Introduction of controlled substance.

"In that (personal jurisdiction data) did, (at - location) on or about 20, wrongfully introduce (grams) (ounces) (pounds) of (a Schedule controlled substance) onto a vessel, aircraft, vehicle, or installation used by the armed forces or under control of the armed forces, to wit: (with the intent to distribute the said controlled substance) (while on duty as a sentinel or lookout)."

ARTICLE 113 - MISBEHAVIOR OF SENTINEL OR LOOKOUT.

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

Elements:

- (1) That the accused was posted or on post as a sentinel or lookout;
(2) That the accused was found drunk while on post, was found sleeping while on post, or left post before being regularly relieved.

Sample specification:

"In that (personal jurisdiction data), on or about 20 (at -location), being (posted) (on post) as a (sentinel) (lookout) at (warehouse no. 7) (post no. 11) (for radar observation) (was found (drunk) (sleeping) Upon his post) (did leave his post before he was regularly relieved).

ARTICLE 114 – DUELING – OMITTED.

**ARTICLE 115 - MALINGERING.**

*Any person subject to this chapter who for the purpose of avoiding work, duty, or service.*

*(1) feigns illness, physical disablement, mental lapse or derangement; or*

*(2) intentionally inflicts self-injury; shall be punished as a court-martial may direct.*

Elements:

(1) That the accused was assigned to, or was aware of prospective assignment to, or availability for, the performance of work, duty, or service;

(2) That the accused feigned illness, physical disablement, mental lapse or derangement, or intentionally inflicted injury upon himself or herself; and

(3) That the accused's purpose or intent in doing so was to avoid the work, duty, or service.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required) (on or about \_\_\_\_\_ 20\_\_\_\_) (from about \_\_\_\_\_ 20\_\_\_\_ to about \_\_\_\_\_ 20\_\_\_\_), for the purpose of avoiding (his duty as officer of the day) (his duty as aircraft mechanic) (work in the mess hall) (service as an enlisted person) (\_\_\_\_\_) (feign (a headache) (a sore back) (illness) (mental lapse) (mental derangement) (\_\_\_\_\_) (intentionally injure himself by \_\_\_\_\_)."

**ARTICLE 116 - RIOT OR BREACH OF PEACE.**

*Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.*

Elements:

(1) Riot.

(A) That the accused was a member of an assembly of three or more persons;

(B) That the accused and at least two other members of this group mutually intended to assist one another against anyone who might oppose them in doing an act for some private purpose;

(C) That the group or some of its members, in furtherance of such purpose, unlawfully committed a tumultuous disturbance of the peace in a violent or turbulent manner; and

(D) That these acts terrorized the public in general in that they caused or were intended to cause public alarm or terror.

(2) Breach of the peace.

(A) That the accused caused or participated in a certain act of a violent or turbulent nature; and

(B) That the peace was thereby unlawfully disturbed.

Sample specifications:**Riot.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (cause) (participate in) a riot by unlawfully assembling with \_\_\_\_\_ (and \_\_\_\_\_) (others to the number of about \_\_\_\_\_ whose names are unknown) for the purpose of (resisting the police of \_\_\_\_\_) (assaulting passers-by) (\_\_\_\_\_) and in furtherance of said purpose did (fight with said police) (assault certain persons. to wit: \_\_\_\_\_) (\_\_\_\_\_), to the terror and disturbance of \_\_\_\_\_."

**Breach of the peace.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (cause) (participate in) a breach of the peace by (wrongfully engaging in a fist fight in the dayroom with \_\_\_\_\_) (using the following provoking language (toward \_\_\_\_\_), to wit: "\_\_\_\_\_" or words to that effect) (wrongfully shouting and singing in a public place, to wit: \_\_\_\_\_) (\_\_\_\_\_)."

**ARTICLE 117 - PROVOKING SPEECHES OR GESTURES.**

*Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.*

Elements:

(1) That the accused wrongfully used words or gestures toward a certain person;

(2) That the words or gestures used were provoking or reproachful; and

(3) That the person toward whom the words or gestures were used was a person subject to the code.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully use (provoking) (reproachful) (words, to wit: "\_\_\_\_\_: " or words to that effect) (and) (gestures, to with: \_\_\_\_\_) towards (Sergeant, U.S. Army) (\_\_\_\_\_)."

**ARTICLE 118 - MURDER - OMITTED.****ARTICLE 119 - MANSLAUGHTER - OMITTED.**

**ARTICLE 119A - DEATH OR INJURY OF AN UNBORN CHILD - OMITTED**

**ARTICLE 120 - RAPE AND CARNAL KNOWLEDGE - OMITTED.**

**ARTICLE 121 - LARCENY AND WRONGFUL APPROPRIATION.**

*(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind-*

*(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or*

*(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner. is guilty of wrongful appropriation.*

*(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.*

Elements:

(1) Larceny.

(A) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(B) That the property belonged to a certain person;

(C) That the property was of a certain value, or of some value; and

(D) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner.

[Note: If the property is alleged to be military property, that is all property, real or personal, owned or held, or used by one of the armed forces of the United States, add the following element.]

(E) That the property was military property.

(2) Wrongful appropriation.

(A) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(B) That the property belonged to a certain person;

(C) That the property was of a certain value, or of some value; and

(D) That the taking, obtaining, or withholding by the accused was with the intent temporarily to deprive or defraud another

person of the use and benefit of the property or temporarily to appropriate the property for the use of the accused or for any person other than the owner.

Sample specifications:

**Larceny.**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, steal, (military property), of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_."*

**Wrongful appropriation.**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully appropriate \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_."*

**ARTICLE 122 - ROBBERY - OMITTED.**

**ARTICLE 123 - FORGERY.**

*Any person subject to this chapter who, with intent to defraud-*

*(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or*

*(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered; is guilty of forgery and shall be punished as a court-martial may direct.*

Elements:

(1) Forgery-making or altering.

(A) That the accused falsely made or altered a certain signature or writing;

(B) That the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice; and

(C) That the false making or altering was with the intent to defraud.

(2) Forgery-uttering.

(A) That a certain signature or writing was falsely made or altered;

(B) That the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice;

(C) That the accused uttered, offered, issued, or transferred the signature or writing;

(D) That at such time the accused knew that the signature or writing had been falsely made or altered; and

(E) That the uttering, offering, issuing or transferring was with the intent to defraud.

Sample specifications:

**Forgery-making or altering.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, with intent to defraud, falsely {make (in its entirety) (the signature of \_\_\_\_\_ as an endorsement to) (the signature of \_\_\_\_\_ to) ( \_\_\_\_\_) a certain (check) (writing) ( \_\_\_\_\_) in the following words and figures, to wit: \_\_\_\_\_ } [alter a certain (check) (writing) ( \_\_\_\_\_) in the following words and figures, to wit: \_\_\_\_\_, by (adding thereto \_\_\_\_\_) ( \_\_\_\_\_)], which said (check) (writing) ( \_\_\_\_\_) would, if genuine, apparently operate to the legal harm of another(\*and which \_\_\_\_\_ (could be) (was) Used to the legal harm of \_\_\_\_\_, in that \_\_\_\_\_}."

[\*Note: This allegation should be used when the document specified is not one which by its nature would clearly operate to the legal prejudice of another - for example, an insurance application. The manner in which the document could be or was used to prejudice the legal rights of another should be alleged in the last blank.]

**Forgery-uttering.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, with intent to defraud, (utter) (offer) (issue) (transfer) a certain (check) (writing) ( \_\_\_\_\_) in the following words and figures, to wit: \_\_\_\_\_, a writing which would, if genuine, apparently operate to the legal harm of another, (which said (check) (writing) ( \_\_\_\_\_) (the signature to which said (check) (writing) ( \_\_\_\_\_) ( \_\_\_\_\_) was, as he, the said \_\_\_\_\_, then well knew, falsely (made) (altered) (\*and which \_\_\_\_\_ (could be) (was) Used to the legal harm of \_\_\_\_\_, in that \_\_\_\_\_}."

[Note: See the note following the first sample specification, above.]

**ARTICLE 123A - MAKING, DRAWING, OR UTTERING CHECK, DRAFT, OR ORDER WITHOUT SUFFICIENT FUNDS - OMITTED.**

**ARTICLE 124 - MAIMING - OMITTED.**

**ARTICLE 125 - SODOMY - OMITTED.**

**ARTICLE 126 - ARSON - OMITTED.**

**ARTICLE 127 - EXTORTION - OMITTED.**

**ARTICLE 128 - ASSAULT.**

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who-

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon; is guilty of aggravated assault and shall be punished as a court-martial may direct.

Elements:

(1) Simple assault.

(A) That the accused attempted or offered to do bodily harm to a certain person; and

(B) That the attempt or offer was done with unlawful force or violence.

(2) Assault consummated by a battery.

(A) That the accused did bodily harm to a certain person; and

(B) That the bodily harm was done with unlawful force or violence.

(3) Assaults permitting increased punishment based on status of victim.

(A) Assault upon a commissioned, warrant, noncommissioned, or petty officer.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the attempt, offer, or bodily harm was done with unlawful force or violence;

(iii) That the person was a commissioned, warrant, noncommissioned, or petty officer; and

(iv) That the accused then knew that the person was a commissioned, warrant, noncommissioned, or petty officer.

(B) Assault upon a sentinel or lookout in the execution of duty, or upon a person in the execution of law enforcement duties.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the attempt, offer, or bodily harm was done with unlawful force or violence;

(iii) That the person was a sentinel or lookout in the execution of duty or was a person who then had and was in the execution of security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties; and

(iv) That the accused then knew that the person was a sentinel or lookout in the execution of duty or was a person who then had and was in the execution of security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties.

(C) Assault consummated by a battery upon a child under 16 years.

(i) That the accused did bodily harm to a certain person;

(ii) That the bodily harm was done with unlawful force or violence; and

(iii) That the person was then a child under the age of 16 years.

(4) Aggravated assault.

(A) Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm.

[Note: When a loaded firearm was used, add the following element.]

(v) That the weapon was a loaded firearm.

(B) Assault in which grievous bodily harm is intentionally inflicted.

(i) That the accused assaulted a certain person;

(ii) That grievous bodily harm was thereby inflicted upon such person;

(iii) That the grievous bodily harm was done with unlawful force or violence; and

(iv) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

[Note: When a loaded firearm was used, add the following element.]

(v) That the injury was inflicted with a loaded firearm.

Sample specifications:

**Simple assault.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, assault \_\_\_\_\_ by (striking at him with a \_\_\_\_\_)."

**Assault consummated by a battery.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, unlawfully (strike) \_\_\_\_\_, (on) (in) the \_\_\_\_\_ with \_\_\_\_\_."

**Assault upon a commissioned officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, assault \_\_\_\_\_, who then was \_\_\_\_\_ and was then known by the accused to be a commissioned officer of ( \_\_\_\_\_, a friendly foreign power) (the United States (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard)) by \_\_\_\_\_."

**Assault upon a warrant, noncommissioned, or petty officer.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, assault \_\_\_\_\_, who then was \_\_\_\_\_ and was then known by the accused to be a (warrant) (noncommissioned) (petty) officer of the United States (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard), by \_\_\_\_\_."

**Assault upon a sentinel or lookout.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, assault \_\_\_\_\_, who then was \_\_\_\_\_ and was then known by the accused to be a (sentinel) (lookout) in the execution of his duty, ((in) (on) the \_\_\_\_\_) by \_\_\_\_\_."

**Assault upon a person in the execution of law enforcement duties.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject- matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, assault \_\_\_\_\_, who then was \_\_\_\_\_ and was then known by the accused to be a person then having and in the execution of (Air Force security police) (military police) (shore patrol) (master at arms) ((military) (civilian) law enforcement)) duties, by \_\_\_\_\_."

**Assault consummated by a battery upon a child under 16 years.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, unlawfully (strike) ( \_\_\_\_\_ ) a child under the age of 16 years, (in) (on) the \_\_\_\_\_ with \_\_\_\_\_."

**Assault, aggravated-with a dangerous weapon, means, or force.**

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, commit an assault upon \_\_\_\_\_ by (shooting) (pointing) (striking) (cutting) ( \_\_\_\_\_ ) (at him) (him) (in) (on) (the \_\_\_\_\_) with (a dangerous weapon) (a (means) (force) likely to produce death or grievous bodily harm), to wit: a (loaded firearm) (pickax) (bayonet) (club) ( \_\_\_\_\_ )."

**ARTICLE 129 - BURGLARY – OMITTED.**

**ARTICLE 130 - HOUSEBREAKING - OMITTED.**

**ARTICLE 131 - PERJURY.**

**Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly-**

**(1) upon a lawful oath or in any form allowed by law to be substituted for an oath gives any false testimony material to the issue or matter of inquiry; or**

**(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, subscribes any false statement material to the issue or matter of inquiry; is guilty of perjury and shall be punished as a court-martial may direct.**

Elements:

(1) Giving false testimony.

(A) That the accused took an oath or affirmation in a certain judicial proceeding or course of justice;

(B) That the oath or affirmation was administered to the accused in a matter in which an oath or affirmation was required or authorized by law;

(C) That the oath or affirmation was administered by a person having authority to do so;

(D) That upon the oath or affirmation that accused willfully gave certain testimony;

(E) That the testimony was material;

(F) That the testimony was false; and

(G) That the accused did not then believe the testimony to be true.

(2) Subscribing false statement.

(A) That the accused subscribed a certain statement in a judicial proceeding or course of justice;

(B) That in the declaration, certification, verification, or statement under penalty of perjury, the accused declared, certified, verified, or stated the truth of that certain statement;

(C) That the accused willfully subscribed the statement;

(D) That the statement was material;

(E) That the statement was false; and

(F) That the accused did not then believe the statement to be true.

Sample specifications:

**Giving false testimony.**

"In that \_\_\_\_\_ (personal jurisdiction data), having taken a lawful (oath) (affirmation) in a (trial by court-martial of \_\_\_\_\_) (trial by a court of competent jurisdiction, to wit: \_\_\_\_\_ of \_\_\_\_\_) (deposition for use in a trial by \_\_\_\_\_ of \_\_\_\_\_) ( \_\_\_\_\_ ) that he would (testify) (depose) truly, did, (at -location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, willfully, corruptly, and contrary to such (oath) (affirmation), (testify) (depose) falsely in substance that \_\_\_\_\_, which (testimony) (deposition) was upon a material matter and which he did not then believe to be true."

**Subscribing false statement.**

"In that \_\_\_\_\_ (personal jurisdiction data), did (at -location) (subject- matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, in a (judicial proceeding) (court of justice), and in a (declaration) (certification) (verification) (statement) Under penalty of perjury pursuant to section 1746 of title 28, United States Code, willfully and corruptly subscribed a false statement material to the (issue) (matter of inquiry), to wit: \_\_\_\_\_, which statement was false in that \_\_\_\_\_, and which statement he did not then believe to be true."

**ARTICLE 132 - FRAUDS AGAINST THE UNITED STATES - OMITTED.**

**ARTICLE 133 - CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN.**

*Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.*

Elements:

- (1) That the accused did or omitted to do certain acts; and
- (2) That, under the circumstances, these acts or omissions constituted conduct unbecoming an officer and gentleman.

Sample specifications:**Copying or using examination paper.**

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20 \_\_, while undergoing a written examination on the subject of \_\_\_\_\_, wrongfully and dishonorably (receive) (request) Unauthorized aid by ((using) (copying) the examination paper of \_\_\_\_\_)." "*

**Drunk or disorderly.**

*"In that \_\_\_\_\_ (personal jurisdiction data), was, (at - location), on or about \_\_\_\_\_ 20 \_\_, in a public place, to wit: \_\_\_\_\_, (drunk) (disorderly) (drunk and disorderly) while in uniform, to the disgrace of the armed forces."*

**ARTICLE 134 - GENERAL ARTICLE.**

*Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.*

Elements:

The proof required for conviction of an offense under Article 134 depends upon the nature of the misconduct charged. If the conduct is punished as a crime or offense not capital, the proof must establish every element of the crime or offense as required by the applicable law.

If the conduct is punished as a disorder or neglect to the prejudice of good order and discipline in the armed forces, or of a nature to bring discredit upon the armed forces, then the following proof is required:

- (1) That the accused did or failed to do certain acts; and
- (2) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

**ARTICLE 134 - ABUSING PUBLIC ANIMAL.**Elements:

- (1) That the accused wrongfully abused a certain public animal; and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully (kick a public drug detector dog in the nose) (\_\_\_\_\_)." "*

**ARTICLE 134 - ADULTERY.**Elements:

- (1) That the accused wrongfully had sexual intercourse with a certain person;
- (2) That, at the time, the accused or the other person was married to someone else; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), (a married man), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully have sexual intercourse with \_\_\_\_\_, a (married) (woman) not (his wife)." "*

**ARTICLE 134 - ASSAULT-INDECENT.**Elements:

- (1) That the accused assaulted a certain person not the spouse of the accused in a certain manner;
- (2) That the acts were done with the intent to gratify the lust or sexual desires of the accused; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, commit an indecent assault upon \_\_\_\_\_ a person not his wife by \_\_\_\_\_ with intent to gratify his (lust) (sexual desires)."

**ARTICLE 134 - COHABITATION, WRONGFUL.**Elements:

- (1) That, during a certain period of time, the accused and another person openly and publicly lived together as husband and wife, holding themselves out as such;
- (2) That the other person was not the spouse of the accused;
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), from about \_\_\_\_\_ 20\_\_\_\_ to about \_\_\_\_\_ 20\_\_\_\_, wrongfully cohabit with \_\_\_\_\_ (a woman) (not his wife)."

**ARTICLE 134 - DEBT, DISHONORABLY FAILING TO PAY.**Elements:

- (1) That the accused was indebted to a certain person or entity in a certain sum;
- (2) That this debt became due and payable on or about a certain date;
- (3) That while the debt was still due and payable the accused dishonorably failed to pay this debt; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), being indebted to \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ for \_\_\_\_\_, which amount became due and payable (on) (about) (on or about) \_\_\_\_\_ 20\_\_\_\_, did (at -location)(subject-matter jurisdiction data, if required), from \_\_\_\_\_ 20\_\_\_\_, to \_\_\_\_\_ 20\_\_\_\_, dishonorably fail to pay said debt."

**ARTICLE 134 - DISLOYAL STATEMENTS.**Elements:

- (1) That the accused made a certain statement;
- (2) That the statement was communicated to another person;
- (3) That the statement was disloyal to the United States;
- (4) That the statement was made with the intent to promote disloyalty or disaffection toward the United States by any member of the armed forces or to interfere with or impair the loyalty to the United States or good order and discipline of any member of the armed forces; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, with intent to (promote (disloyalty) (disaffection) (disloyalty and disaffection)) ((interfere with) (impair) the (loyalty) (good order and discipline)) of any member of the armed forces of the United States communicate to \_\_\_\_\_, the following statement, to wit: " \_\_\_\_\_", or words to that effect, which statement was disloyal to the United States."

**ARTICLE 134 - DISORDERLY CONDUCT, DRUNKENNESS.**Elements:

- (1) That the accused was drunk, disorderly, or drunk and disorderly on board ship or in some other place; and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), was, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20\_\_\_\_ (drunk) (disorderly) (drunk and disorderly) (which conduct was of a nature to bring discredit upon the armed forces)."

**ARTICLE 134 - DRUNKENNESS-INCAPACITATION FOR PERFORMANCE OF DUTIES THROUGH PRIOR WRONGFUL INDULGENCE IN INTOXICATING LIQUOR OR ANY DRUG.**Elements:

- (1) That the accused had certain duties to perform;

(2) That the accused was incapacitated for the proper performance of such duties;

(3) That such incapacitation was the result of previous wrongful indulgence in intoxicating liquor or any drug; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), was, (at - location), on or about \_\_\_\_\_ 20 \_\_\_\_, as a result of wrongful previous overindulgence in intoxicating liquor or drugs incapacitated for the proper performance of his duties."*

**ARTICLE 134 - FALSE SWEARING.**

Elements:

- (1) That the accused took an oath or equivalent;
- (2) That the oath or equivalent was administered to the accused in a matter in which such oath or equivalent was required or authorized by law;
- (3) That the oath or equivalent was administered by a person having authority to do so;
- (4) That upon this oath or equivalent the accused made or subscribed a certain statement;
- (5) That the statement was false;
- (6) That the accused did not then believe the statement to be true; and
- (7) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, (in an affidavit) (in \_\_\_\_\_), wrongfully and unlawfully (make) (subscribe) Under lawful (oath) (affirmation) a false statement in substance as follows: \_\_\_\_\_, which statement he did not then believe to be true."*

**ARTICLE 134 - FIREARM, DISCHARGING THROUGH NEGLIGENCE.**

Elements:

- (1) That the accused discharged a firearm;
- (2) That such discharge was caused by the negligence of the accused; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, through negligence, discharge a (service rifle) \_\_\_\_\_ in the (squadron) (tent) (barracks) of \_\_\_\_\_."*

**ARTICLE 134 - FIREARM, DISCHARGING-WILLFULLY, UNDER SUCH CIRCUMSTANCES AS TO ENDANGER HUMAN LIFE.**

Elements:

- (1) That the accused discharged a firearm;
- (2) That the discharge was willful and wrongful;
- (3) That the discharge was under circumstances such as to endanger human life; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, wrongfully and willfully discharge a firearm, to wit: \_\_\_\_\_, (in the mess hall of \_\_\_\_\_) (\_\_\_\_\_), under circumstances such as to endanger human life."*

**ARTICLE 134 - FLEEING SCENE OF ACCIDENT.**

Elements:

- (1) Driver.
  - (A) That the accused was the driver of a vehicle;
  - (B) That while the accused was driving the vehicle was involved in an accident;
  - (C) That the accused knew that the vehicle had been in an accident;
  - (D) That the accused left the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) or (providing identification);
  - (E) That such leaving was wrongful; and

(F) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) Senior passenger.

(A) That the accused was a passenger in a vehicle which was involved in an accident;

(B) That the accused knew that said vehicle had been in an accident;

(C) That the accused was the superior commissioned or noncommissioned officer of the driver, or commander of the vehicle, and wrongfully and unlawfully ordered, caused, or permitted the driver to leave the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) (or) (providing identification); and

(D) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), (the driver of) (a passenger in\*) (the senior officer/noncommissioned officer in) (\_\_\_\_\_ in) a vehicle at the time of an accident in which said vehicle was involved, and having knowledge of said accident, did, at \_\_\_\_\_ (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 (wrongfully leave) (by \_\_\_\_\_, assist the driver of the said vehicle in wrongfully leaving\*) (wrongfully order, cause, or permit the driver to leave) the scene of the accident without (providing assistance to \_\_\_\_\_, who had been struck (and injured) by the said vehicle) (making his (the driver's) identity known)."

[Note: This language should be used when the accused was a passenger and is charged as a principal.]

**ARTICLE 134 – FRATERNIZATION.**

Elements:

- (1) That the accused was a commissioned or warrant officer;
- (2) That the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner;
- (3) That the accused then knew the person(s) to be (an) enlisted member(s);
- (4) That such fraternization violated the custom of the accused's service that officers shall not fraternize with enlisted members on terms of military equality; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_, 20\_\_\_\_, knowingly

fraternize with \_\_\_\_\_, an enlisted person, on terms of military equality, to wit: \_\_\_\_\_, in violation of the custom of the United States Army that officers shall not fraternize with enlisted persons on terms of military equality."

**ARTICLE 134 - GAMBLING WITH SUBORDINATE.**

Elements:

- (1) That the accused gambled with a certain Servicemember;
- (2) That the accused was then a noncommissioned or petty officer;
- (3) That the Servicemember was not then a noncommissioned or petty officer and was subordinate to the accused;
- (4) That the accused knew that the Servicemember was not then a noncommissioned or petty officer and was subordinate to the accused; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, gamble with \_\_\_\_\_, then knowing that the said \_\_\_\_\_, was not a noncommissioned or petty officer and was subordinate to the said \_\_\_\_\_."

**ARTICLE 134 - IMPERSONATING A COMMISSIONED, WARRANT, NONCOMMISSIONED, OR PETTY OFFICER, OR AN AGENT OR OFFICIAL.**

Elements:

- (1) That the accused impersonated a commissioned, warrant, noncommissioned, or petty officer, or an agent of superior authority of one of the armed forces of the United States, or an official of a certain government, in a certain manner;
- (2) That the impersonation was wrongful and willful; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note 1: If intent to defraud is in issue, add the following additional element after (2), above: That the accused did so with the intent to defraud a certain person or organization in a certain manner;].

[Note 2: If the accused is charged with impersonating an official of a certain government without an intent to defraud, use the following additional element after (2), above: That the accused committed one or more acts which exercised or asserted the authority of the office the accused claimed to have].

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully and willfully impersonate (a (commissioned officer) (warrant officer) (noncommissioned officer) (petty officer) (agent of superior authority) of the (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard)) (an official of the Government of \_\_\_\_\_) by (publicly wearing the uniform and insignia of rank of a (lieutenant of the (\_\_\_\_\_) (showing the credentials of \_\_\_\_\_) (\_\_\_\_\_) (with intent to defraud \_\_\_\_\_) by \_\_\_\_\_\*) (and (exercised) (asserted) the authority of \_\_\_\_\_ by \_\_\_\_\_\*\*)."

(\*See note 1; \*\*See note 2.)

**ARTICLE 134 - INDECENT EXPOSURE.**Elements:

- (1) That the accused exposed a certain part of the accused's body to public view in an indecent manner;
- (2) That the exposure was willful and wrongful; and
- (3) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, while (at a barracks window) (\_\_\_\_\_) willfully and wrongfully expose in an indecent manner to public view his \_\_\_\_\_."

**ARTICLE 134 – INDECENT LANGUAGE.**Elements:

- (1) That the accused orally or in writing communicated to another person certain language;
- (2) That such language was indecent; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (orally) (in writing) communicate to \_\_\_\_\_, certain indecent language, to wit: \_\_\_\_\_."

**ARTICLE 134 - INDECENT ACTS WITH ANOTHER.**Elements:

- (1) That the accused committed a certain wrongful act with a certain person;
- (2) That the act was indecent; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_, (personal jurisdiction data), did (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully commit an indecent act with \_\_\_\_\_ by \_\_\_\_\_."

**ARTICLE 134 – MISPRISION OF SERIOUS OFFENSE.**Elements:

- (1) That a certain serious offense was committed by a certain person;
- (2) That the accused knew that the said person had committed the serious offense;
- (3) That, thereafter, the accused concealed the serious offense and failed to make it known to civilian or military authorities as soon as possible;
- (4) That the concealing was wrongful; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specifications:

"In that \_\_\_\_\_ (personal jurisdiction data), having knowledge that had actually committed a serious offense to wit: (the theft of \_\_\_\_\_) (\_\_\_\_\_), did, (at - location) (subject-matter jurisdiction data, if required) from about \_\_\_\_\_ 20\_\_\_\_, to about \_\_\_\_\_ 20\_\_\_\_, wrongfully conceal such serious offense by \_\_\_\_\_ and fail to make the same known to the civil or military authorities as soon as possible."

**ARTICLE 134 - OBSTRUCTING JUSTICE.**Elements:

- (1) That the accused wrongfully did a certain act;
- (2) That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be criminal proceedings pending;

(3) That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully (endeavor to) (impede (a trial by court-martial) (an investigation) ( \_\_\_\_\_ ) [influence the actions of \_\_\_\_\_, (a trial counsel of the court-martial) (a defense counsel of the court-martial) (an officer responsible for making a recommendation concerning disposition of charges) ( \_\_\_\_\_ )] [(influence) (alter) the testimony of \_\_\_\_\_ as a witness before a (court-martial) (an investigating officer) ( \_\_\_\_\_ ) in the case of \_\_\_\_\_ by [(promising) (offering) (giving) to the said \_\_\_\_\_, (the sum of \$ \_\_\_\_\_) ( \_\_\_\_\_, of a value of about \$ \_\_\_\_\_)] [communicating to the said \_\_\_\_\_ a threat to \_\_\_\_\_]. (if) (unless) he, the said \_\_\_\_\_, would [recommend dismissal of the charges against said \_\_\_\_\_] [(wrongfully refuse to testify) (testify falsely concerning \_\_\_\_\_)] [(as such trial) (before such investigating officer)] [ \_\_\_\_\_]."

**ARTICLE 134 - WRONGFUL INTERFERENCE WITH AN ADVERSE ADMINISTRATIVE PROCEEDING.**

Elements:

- (1) That the accused wrongfully did a certain act;
- (2) That the accused did so in the case of a certain person against whom the accused had reason to believe there was or would be an adverse administrative proceeding pending;
- (3) That the act was done with the intent to influence, impede, or obstruct the conduct of such administrative proceeding, or otherwise obstruct the due administration of justice;
- (4) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (wrongfully endeavor to) [impede (an adverse administrative proceeding) (an investigation) ( \_\_\_\_\_ )] [influence the actions of \_\_\_\_\_, (an officer responsible for making a recommendation concerning the adverse administrative action)(an individual responsible for making a decision concerning an adverse administrative proceeding) (an individual responsible for processing an adverse administrative proceeding) ( \_\_\_\_\_ )] [(influence)(alter) the testimony of a witness before (a board established to consider an administrative proceeding or elimination) (an investigating office) ( \_\_\_\_\_ )] in the case of \_\_\_\_\_, by] (Promising) (offering) (giving) to the said \_\_\_\_\_, (the sum of \$ \_\_\_\_\_) ( \_\_\_\_\_), of a value of about

\$ \_\_\_\_\_)] [communicating to the said \_\_\_\_\_ a threat to \_\_\_\_\_] [ \_\_\_\_\_], (if) (unless) the said \_\_\_\_\_, would [recommend dismissal of the action against said \_\_\_\_\_] [(wrongfully refuse to testify) (testify falsely concerning \_\_\_\_\_) ( \_\_\_\_\_)] [(at such administrative proceeding) (before such investigating officer) (before such administrative board)] [ \_\_\_\_\_]."

**ARTICLE 134 - PERJURY: SUBORNATION OF.**

Elements:

- (1) That the accused induced and procured a certain person to take an oath or its equivalent and to falsely testify, depose, or state upon such oath or its equivalent concerning a certain matter;
- (2) That the oath or its equivalent was administered to said person in a matter in which an oath or its equivalent was required or authorized by law;
- (3) That the oath or its equivalent was administered by a person having authority to do so;
- (4) That upon the oath or its equivalent said person willfully made or subscribed a certain statement;
- (5) That the statement was material;
- (6) That the statement was false;
- (7) That the accused and the said person did not then believe that the statement was true; and
- (8) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_ procure to commit perjury by inducing him, the said \_\_\_\_\_, to take a lawful (oath) (affirmation) in a (trial by court-martial of \_\_\_\_\_) (trial by a court of competent jurisdiction, to wit: \_\_\_\_\_ of \_\_\_\_\_) (deposition for use in a trial by \_\_\_\_\_ of \_\_\_\_\_) ( \_\_\_\_\_ ) that he, the said \_\_\_\_\_, would (testify) (depose) ( \_\_\_\_\_ ) truly, and to (testify) (depose) ( \_\_\_\_\_ ) willfully, corruptly, and contrary to such (oath) (affirmation) in substance that \_\_\_\_\_, which (testimony) (deposition) ( \_\_\_\_\_ ) was upon a material matter and which the accused and the said \_\_\_\_\_ did not then believe to be true."

**ARTICLE 134 - PUBLIC RECORD: ALTERING, CONCEALING, REMOVING, MUTILATING, OBLITERATING, OR DESTROYING).**Elements:

- (1) That the accused altered, concealed, removed, mutilated, obliterated, destroyed, or took with the intent to alter, conceal, remove, mutilate, obliterate, or destroy, a certain public record;
- (2) That the act of the accused was willful and unlawful; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, willfully and unlawfully ((alter) (conceal) (remove) (mutilate) (obliterate) (destroy)) (take with intent to (alter) (conceal) (remove) (mutilate) (obliterate) (destroy)) a public record, to wit: \_\_\_\_\_."

**ARTICLE 134 - RECKLESS ENDANGERMENT.**Elements:

- (1) That the accused did engage in conduct;
- (2) That the conduct was wrongful and reckless or wanton;
- (3) That the conduct was likely to produce death or grievous bodily harm to another person; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_ wrongfully and (recklessly) (wantonly) engage in conduct, to wit: \_\_\_\_\_ (describe conduct), conduct likely to cause death or grievous bodily harm to \_\_\_\_\_."

**ARTICLE 134 - RESTRICTION, BREAKING.**Elements:

- (1) That a certain person ordered the accused to be restricted to certain limits;
- (2) That said person was authorized to order said restriction;
- (3) That the accused knew of the restriction and the limits thereof;
- (4) That the accused went beyond the limits of the restriction before being released therefrom by proper authority; and

- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), having been restricted to the limits of \_\_\_\_\_, by a person authorized to do so, did, (at -location), on or about \_\_\_\_\_ 20 \_\_\_\_, break said restriction."

**ARTICLE 134 - SEIZURE: DESTRUCTION, REMOVAL, OR DISPOSAL OF PROPERTY TO PREVENT.**Elements:

- (1) That one or more persons authorized to make searches and seizures were seizing, about to seize, or endeavoring to seize certain property;
- (2) That the accused destroyed, removed, or otherwise disposed of that property with intent to prevent the seizure thereof;
- (3) That the accused then knew that person(s) authorized to make searches were seizing, about to seize, or endeavoring to seize the property; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, with intent to prevent its seizure, (destroy) (remove) (dispose of) \_\_\_\_\_, property which, \_\_\_\_\_ as then knew, (a) person(s) authorized to make searches and seizures were (seizing) (about to seize) (endeavoring to seize).

**ARTICLE 134 - SELF-INJURY WITHOUT INTENT TO AVOID SERVICE.**Elements:

- (1) That the accused intentionally inflicted injury upon himself or herself;
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) on or about \_\_\_\_\_ 20 \_\_\_\_, (a time of war,) intentionally injure himself by \_\_\_\_\_ (nature and circumstances of injury)."

**ARTICLE 134. SENTINEL OR LOOKOUT: OFFENSES AGAINST OR BY.**

Elements:

- (1) Disrespect to a sentinel or lookout.
  - (A) That a certain person was a sentinel or lookout;
  - (B) That the accused knew that said person was a sentinel or lookout;
  - (C) That the accused used certain disrespectful language or behaved in a certain disrespectful manner;
  - (D) That such language or behavior was wrongful.
  - (E) That such language or behavior was directed toward and within the sight or hearing of the sentinel or lookout;
  - (F) That said person was at the time in the execution of duties as a sentinel or lookout; and
  - (G) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.
- (2) Loitering or wrongfully sitting on post by a sentinel or lookout, and
  - (A) That the accused was posted as a sentinel or lookout;
  - (B) That while so posted, the accused loitered or wrongfully sat down on post;
  - (C) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specifications:

- (1) Disrespect to a sentinel or lookout.

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, then knowing that was a sentinel or lookout, (wrongfully use the following disrespectful language " \_\_\_\_\_," or words to that effect, to \_\_\_\_\_) (wrongfully behave in a disrespectful manner toward \_\_\_\_\_, by \_\_\_\_\_) a (sentinel) (lookout) in the execution of his duty."*

- (2) Loitering or wrongfully sitting down on post by a sentinel or lookout.

*"In that \_\_\_\_\_ (personal jurisdiction data), while posted as a (sentinel) (lookout), did, (at -location) on or about \_\_\_\_\_ 20\_\_\_\_, (loiter) (wrongfully sit down) on his post."*

**ARTICLE 134 - SOLICITING ANOTHER TO COMMIT AN OFFENSE.**

Elements:

- (1) That the accused solicited or advised a certain person or persons to commit a certain offense under the code other than one of the four offenses named in Article 82;
- (2) That the accused did so with the intent that the offense actually be committed; and
- (3) That, under the circumstances, the' conduct of the accused was to the prejudice of good order and discipline in the armed forces or was a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully (solicit) (advise) \_\_\_\_\_ (to disobey a general regulation, to wit: \_\_\_\_\_) (to steal \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_) (to \_\_\_\_\_), by \_\_\_\_\_."*

**ARTICLE 134 - STOLEN PROPERTY: KNOWINGLY RECEIVING, BUYING, CONCEALING.**

Elements:

- (1) That the accused wrongfully received, bought, or concealed certain property of some value;
- (2) That the property belonged to another person;
- (3) That the property had been stolen;
- (4) That the accused then knew that the property had been stolen; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, (at - location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully (receive) (buy) (conceal) \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_, which property, as he, the said \_\_\_\_\_, then knew, had been stolen."*

**ARTICLE 134 – STRAGGLING.**

Elements:

- (1) That the accused, while accompanying the accused's organization on a march, maneuvers, or similar exercise, straggled;

(2) That the straggling was wrongful; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), did, at \_\_\_\_\_, on or about \_\_\_\_\_, 20\_\_\_\_, while accompanying his organization on (a march) (maneuvers) (\_\_\_\_\_), wrongfully straggle."*

**ARTICLE 134 - TESTIFY: WRONGFUL REFUSAL.**

Elements:

(1) That the accused was in the presence of a court-martial, board of officer(s), military commission, court of inquiry, an officer conducting an investigation under Article 32, or an officer taking a deposition, of or for the United States, at which a certain person was presiding;

(2) That the said person presiding directed the accused to qualify as a witness or, having so qualified, to answer a certain question;

(3) That the accused refused to qualify as a witness or answer said question;

(4) That the refusal was wrongful; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

*"In that \_\_\_\_\_ (personal jurisdiction data), being in the presence of (a) (an) ((general) (special) (summary) court-martial) (board of officer(s)) (military commission) (court of inquiry) (officer conducting an investigation under Article 32, Florida Code of Military Justice) (officer taking a deposition) (\_\_\_\_\_) (of) (for) the United States, of which \_\_\_\_\_ was (military judge) (president), (\_\_\_\_\_), (and having been directed by the \_\_\_\_\_ said to qualify as a witness) (and having qualified as a witness and having been directed by the said \_\_\_\_\_ to answer the following question(s) put to him as a witness, "\_\_\_\_\_" ), did, (at - location), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully refuse (to qualify as a witness) (to answer said question(s))."*

**ARTICLE 134 - THREAT OR HOAX: BOMB.**

Elements:

(1) Bomb threat.

(A) That the accused communicated certain language;

(B) That the language communicated amounted to a threat 1;

(C) That the harm threatened was to be done by means of an explosive;

(D) That the communication was wrongful; and

(E) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) Bomb hoax.

(A) That the accused communicated or conveyed certain information;

(B) That the language or information concerned an attempt being made or to be made by means of an explosive to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(C) That the information communicated by the accused was false and that the accused then knew it was false; and

(D) That the communication of the information by the accused was malicious;

(E) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specifications:

(1) Bomb threat.

*"In that \_\_\_\_\_ (personal jurisdiction data) did, (at - location) (subject matter jurisdiction data, if required) on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully communicate certain language, to wit: \_\_\_\_\_ which language constituted a threat to harm a person or property by means of an explosive."*

(2) Bomb hoax.

*"In that \_\_\_\_\_ (personal jurisdiction data) did, (at - location) (subject matter jurisdiction data, if required) on or about \_\_\_\_\_ 20\_\_\_\_, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully ((kill) (injure) (intimidate) \_\_\_\_\_ ((damage) (destroy) \_\_\_\_\_) by means of an explosive, to wit: \_\_\_\_\_ and which information then knew to be false."*

**ARTICLE 134 - THREAT, COMMUNICATING.**

Elements:

(1) That the accused communicated certain language expressing a present determination or intent to wrongfully injure the person, property, or reputation of another person, presently or in the future;

(2) That the communication was made known to that person or to a third person;

(3) That the communication was wrongful; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully communicate to \_\_\_\_\_ a threat by \_\_\_\_\_ (accuse \_\_\_\_\_ of having committed the offense of \_\_\_\_\_) ( \_\_\_\_\_ )."

**ARTICLE 134 - UNLAWFUL ENTRY.**

Elements:

- (1) That the accused entered the real property of another or certain personal property of another which amounts to a structure usually used for habitation or storage; and
- (2) That such entry was unlawful; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, unlawfully enter the (dwelling house) (garage) (warehouse) (tent) (vegetable garden) (orchard) (stateroom) ( \_\_\_\_\_ ) of \_\_\_\_\_."

**ARTICLE 134 - WEAPON: CONCEALED, CARRYING.**

Elements:

- (1) That the accused carried a certain weapon concealed on or about the accused's person;
- (2) That the carrying was unlawful;
- (3) That the weapon was a dangerous weapon; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, unlawfully carry on or about his/her person a concealed weapon, to wit: \_\_\_\_\_."

**ARTICLE 134 - WEARING UNAUTHORIZED INSIGNIA, DECORATION, BADGE, RIBBON, DEVICE, OR LAPEL BUTTON.**

Elements:

- (1) That the accused wore a certain insignia, decoration, badge, ribbon, device, or lapel button upon the accused's uniform or civilian clothing;
- (2) That the accused was not authorized to wear the item;
- (3) That the wearing was wrongful; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Sample specification:

"In that \_\_\_\_\_ (personal jurisdiction data), did, (at -location), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully and without authority wear upon his (uniform) (civilian clothing) (the insignia or grade of a (master sergeant of \_\_\_\_\_) (chief gunner's mate of \_\_\_\_\_)) (Combat Infantryman Badge) (the Distinguished Service Cross) (the ribbon representing the Silver Star) (the lapel button representing the Legion of Merit) ( \_\_\_\_\_ )."

LEFT BLANK      INTENTIONALLY

APPENDIX C  
GUIDE FOR FCMJ SUMMARY COURTS-MARTIAL

General Note to Summary Court-Martial Officer (SCM): It is not the purpose of this guide to answer all questions which may arise during a trial. If this Guide, Chapter 13 of the Manual for Courts-Martial, and other legal materials available fail to provide sufficient information concerning law or procedure, the SCM should seek advice on these matters from a judge advocate.

The SCM should examine the format for record of trial at paragraph 5-5 and Figure 5-1 of this Regulation. It may be useful as a checklist during the proceedings to ensure proper preparation after trial. The SCM should become familiar with this guide before using it. Instructions for the SCM are contained in **[brackets]**, and should not be read aloud. Language in **(parentheses)** reflects optional or alternative language. The SCM should read the appropriate language aloud.

LEFT BLANK INTENTIONALLY

**PRELIMINARY PROCEEDING**

**Identity of SCM**

SCM: I am \_\_\_\_\_. I have been detailed to conduct a summary court-martial (by Summary Court-Martial Convening Order (Number), Headquarters, \_\_\_\_\_, dated [see convening order]).

**Referral of charges to trial**

Charges against you have been referred to me for trial by summary court-martial by \_\_\_\_\_ [name and title of convening authority] on \_\_\_\_\_ [date of referral - see block IV on page 2 of charge sheet].

**Providing the accused with charge sheet**

[Note 1. Hand copy of charge sheet to the accused.]

SCM: I suggest that you keep this copy of the charge sheet and refer to it during the trial. The charges are signed by \_\_\_\_\_ [see first name at top of page 2 of charge sheet], a person subject to the Florida Code of Military Justice, as accuser, and are properly sworn to before a commissioned officer of the armed forces authorized to administer oaths.

The charges allege, in general, violation of Article \_\_\_\_\_, in that you \_\_\_\_\_ [describe the charge] (and Article \_\_\_\_\_, in that you \_\_\_\_\_). I am now going to tell you about certain rights you have in this trial. You should carefully consider each explanation because you will soon have to decide whether to object to trial by summary court-martial. Until I have completed my explanation, do not say anything except to answer the specific questions which I ask you. Do you understand that?

Accused: \_\_\_\_\_ . [Acknowledge an understanding]

**Duties of SCM**

SCM: As summary court-martial it is my duty to obtain and examine all the evidence concerning any offense(s) to which you plead not guilty, and to thoroughly and impartially inquire into both sides of the matter. I will call witnesses for the prosecution and question them, and I will help you in cross-examining those witnesses. I will help you obtain evidence and present the defense. This means that one of my duties is to help you present your side of the case. You may also represent yourself, and if you do, it is my duty to help you. You are presumed to be innocent until your guilt has been proved by legal and competent evidence beyond a reasonable doubt. If you are found guilty of an offense, it is also my duty to consider matters which might affect the sentence, and then to adjudge an appropriate sentence. Do you understand that?

Accused: \_\_\_\_\_ .

**Right to object to SCM**

SCM: You have the absolute right to object to trial by summary court-martial. If you object the appropriate authority will decide how to dispose of the case. The charges may be referred to a special or general court martial, or they may be dismissed, or the offenses charged may be disposed of by (nonjudicial punishment [if not previously offered and refused] or) administrative measures. Do you understand that?

Accused: \_\_\_\_\_ .

**Right to inspect allied papers and personnel records**

SCM:

You may inspect the allied papers and personnel records [*Hand those documents which are available to the accused for examination in your presence.*] (You may also inspect [*identify personnel records or other documents which are not present*] which are located at \_\_\_\_\_ . You may have time to examine these if you wish.)

**Witnesses/other evidence for the government**

SCM:

The following witnesses will probably appear and testify against you: \_\_\_\_\_ .

The following documents and physical evidence will probably be introduced: \_\_\_\_\_ .

**Right to cross-examine**

After these witnesses have testified in response to my questions, you may cross-examine them. If you prefer, I will do this for you after you inform me of the matters about which you want the witness to be questioned. Do you understand that?

Accused:

\_\_\_\_\_ .

**Right to present evidence**

SCM:

You also have the right to call witnesses and present other evidence. This evidence may concern any or all of the charges. (I have arranged to have the following witnesses for you present at the trial.) I will arrange for the attendance of other witnesses and the production of other evidence requested by you. I will help you in any way possible. Do you understand that?

Accused:

\_\_\_\_\_ .

**Evidence to be considered**

SCM:

In deciding this case, I will consider only evidence introduced during the trial. I will not consider any other information, including any statements you have made to me, which is not introduced in accordance with the Military Rules of Evidence during the court-martial. Do you understand that?

Accused:

\_\_\_\_\_ .

**Right to remain silent**

SCM:

You have the absolute right during this trial to choose not to testify and to say nothing at all about the offense(s) with which you are charged. If you do not testify, I will not hold it against you in any way. I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).

**Right to testify concerning the offense(s)**

However, if you choose, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, I will consider your testimony just like the testimony of any other witness.

**If one specification**

**[Note 2. Use the following if there is only one specification.]**  
*If you decide to testify concerning the offense, you can be questioned by me about the whole subject of the offense. Do you understand that?*

Accused:

\_\_\_\_\_ .

**If more than one specification**

**[Note 3. Use the following if there is more than one specification.]**  
*If you decide to testify, you may limit your testimony to any particular offense charged against you and not testify concerning any other offense(s) charged against you. If you do this, I may question you about the whole subject of the offense about which you testify, but I may not question you about any offense(s) concerning which you do not testify. Do you understand that?*

Accused: \_\_\_\_\_

**Right to testify, remain silent or make an unsworn statement in extenuation and mitigation**

In addition, if you are found guilty of an offense, you will have the right to testify under oath concerning matters regarding an appropriate sentence. You may, however, remain silent, and I will not hold your silence against you in any way. You may, if you wish, make an unsworn statement about such matters. This statement may be oral, in writing, or both. If you testify, I may cross-examine you. If you make an unsworn statement, however, I am not permitted to question you about it, but I may receive evidence to contradict anything contained in the statement. Do you understand that?

Accused: \_\_\_\_\_

**Maximum punishment**

SCM:

If I find you guilty (of the offense) (of any of the offenses charged), the maximum sentence which I am authorized to impose is:

- Verbal or written reprimand;
- Fine up to \$200.00 per offense;
- Confinement in a county jail for a period not exceeding 25 days;
- Forfeiture of all pay and allowances for 25 days/UTAs; and/or
- Reduction by one enlisted grade of a member who the convening authority had the authority to promote to their present grade.
- Or combination of the above, except that a fine AND confinement may not be adjudged together.

Do you understand the maximum punishment which this court-martial is authorized to adjudge?

Accused: \_\_\_\_\_

**Plea options**

SCM:

You may plead not guilty or guilty to each offense with which you are charged. You have an absolute right to plead not guilty and to require that your guilt be proved beyond a reasonable doubt before you can be found guilty. You have the right to plead not guilty even if you believe you are guilty. Do you understand that?

Accused: \_\_\_\_\_

SCM:

If you believe you are guilty of an offense, you may, but are not required to, plead guilty to that offense. If you plead guilty to an offense, you are admitting that you committed that offense, and this court-martial could find you guilty of that offense without hearing any evidence, and could sentence you to the maximum penalty I explained to you before. Do you understand that?

Accused: \_\_\_\_\_

**Lesser included offenses**

*[Examine the list of lesser included offenses under each punitive article alleged to have been violated. See Appendix B, FNG Reg 27-10. If a lesser included offense may be in issue, give the following advice.]*

SCM: You may plead not guilty to Charge \_\_\_\_\_, Specification \_\_\_\_\_, as it now reads, but plead guilty to the offense of \_\_\_\_\_, which is included in the offense charged. Of course, you are not required to do this. If you do, then I can find you guilty of this lesser offense without hearing evidence on it. Furthermore, I could still hear evidence on the greater offense for purposes of deciding whether you are guilty of it. Do you understand that?

Accused: \_\_\_\_\_.

SCM: Do you need more time to consider whether to object to trial by summary court-martial or to prepare for trial?

Accused: \_\_\_\_\_.

*[If time is requested or otherwise appropriate.]*

We will convene the court-martial at \_\_\_\_\_. When we convene, I will ask you whether you object to trial by summary court-martial. If you do not object, I will then ask for your pleas to the charge(s) and specification(s), and for you to make any motions you may have.

**Convene**

**TRIAL PROCEEDINGS**

SCM: *[If time was requested or the proceedings were adjourned, they must be reconvened. If there was no adjournment, the SCM may proceed with the trial]*  
This summary court-martial is now in session.

**Objection/consent to trial by SCM**

Do you object to trial by summary court-martial?

Accused: \_\_\_\_\_.

**Entries on record of trial**

*[Note 6. If there is an objection, adjourn the court-martial and return the file to the convening authority. If the accused does not object, proceed as follows. The accused may be asked to initial the notation on the record of trial that the accused did or did not object to trial by summary court-martial. This is not required, however.]*

**Reading of the charges**

SCM: Look at the charge sheet. Have you read the charge(s) and specification(s)?

Accused: *[If accused requests, read the charge(s) and specification(s).]*

**Arraignment**

SCM: How do you plead? Before you answer that question, if you have any motion to dismiss (the) (any) charge or specification, or for other relief, you should make it now.

Accused: \_\_\_\_\_.

*[Note 7. If the accused makes a motion to dismiss or to grant other relief, or such a motion is raised by the summary court-martial, do not proceed with the trial until the motions have been decided. After any motions have been disposed of and if termination of the trial has not resulted, have the accused enter pleas and proceed as indicated below.]*

**Pleas**

Accused:

I plead \_\_\_\_\_.

**[Note 8. If the accused refuses to plead to any offense charged, enter pleas of not guilty. If the accused refuses to enter any plea, evidence must be presented to establish that the accused is the person named in the specification(s) and is subject to court-martial jurisdiction.]**

**[Note 9. If the accused pleads not guilty to all offenses charged, proceed to the section entitled "Procedures-Not Guilty Pleas."]**

**[Note 10. If the accused pleads guilty to one or more offenses, proceed as follows.]**

**Procedures-guilty pleas**

SCM:

I will now explain the meaning and effect of your pleas, and question you so that I can be sure you understand. Refer to the charge(s) and specification(s). I will not accept your pleas of guilty unless you understand their meaning and effect. You are legally and morally entitled to plead not guilty even though you believe you are guilty, and to require that your guilt be proved beyond a reasonable doubt. A plea of guilty is the strongest form of proof known to the law. On your pleas of guilty alone, without receiving any evidence, I can find you guilty of the offense(s) to which you have pleaded guilty. I will not accept your pleas unless you realize that by your pleas you admit every element of the offense(s) to which you have pleaded guilty, and that you are pleading guilty because you really are guilty. If you are not convinced that you are in fact guilty, you should not allow anything to influence you to plead guilty. Do you understand that?

Accused:

\_\_\_\_\_.

SCM:

Do you have any questions?

Accused:

\_\_\_\_\_.

SCM:

By your pleas of guilty you give up three very important rights. (You keep these rights with respect to any offense(s) to which you have pleaded not guilty.) The rights which you give up when you plead guilty are:

First, the right against self-incrimination. This means you give up the right to say nothing at all about (this) (these) offense(s) to which you have pleaded guilty. In a few minutes I will ask you questions about (this) (these) offense(s), and you will have to answer my questions for me to accept your pleas of guilty.

Second, the right to a trial of the facts by this court-martial. This means you give up the right to have me decide whether you are guilty based upon the evidence which would be presented.

Third, the right to be confronted by and to cross-examine any witnesses against you. This means you give up the right to have any witnesses against you appear, be sworn and testify, and to cross-examine them under oath.

Do you understand these rights?

Accused:

\_\_\_\_\_.

SCM: Do you understand that by pleading guilty you give up these rights?

Accused: \_\_\_\_\_.

SCM: On your pleas of guilty alone you could be sentenced to \_\_\_\_\_.

**[Note 11. Re-read the appropriate sentencing section at notes 4 or 5 above unless the summary court martial is a rehearing or new or other trial, in which case see R.C.M. 810(d).]**

Do you have any questions about the sentence which could be imposed as a result of your pleas of guilty?

Accused: \_\_\_\_\_.

SCM: Has anyone made any threat or tried in any other way to force you to plead guilty?

Accused: \_\_\_\_\_.

**Pretrial agreement**

SCM: Are you pleading guilty because of any promises or understandings between you and the convening authority or anyone else?

Accused: \_\_\_\_\_.

SCM: **[Note 12. If the accused answers yes, the summary court-martial must inquire into the terms of such promises or understandings in accordance with R.C.M. 910.]**

**[Note 13. If the accused has pleaded guilty to a lesser included offense, also ask the following question.]**

**Effect of guilty pleas to lesser included offenses**

Do you understand that your pleas of guilty to the lesser included offense of \_\_\_\_\_ confess all the elements of the offense charged except \_\_\_\_\_, and that no proof is necessary to establish those elements admitted by your pleas?

Accused: \_\_\_\_\_.

SCM: The following elements state what would have to be proved beyond a reasonable doubt before the court-martial could find you guilty if you had pleaded not guilty. As I read each of these elements to you, ask yourself whether each is true and whether you want to admit that each is true, and then be prepared to discuss each of these elements with me when I have finished.

The elements of the offense(s) which your pleas of guilty admit are \_\_\_\_\_.

**[Note 14. Read the elements of the offense(s) from the appropriate punitive article in Appendix B of the FNG Reg 27-10. This advice should be specific as to names, dates, places, amounts, and acts.]**

Do you understand each of the elements of the offense(s)?

Accused: \_\_\_\_\_.

SCM: Do you believe, and admit, that taken together these elements correctly describe what you did?

Accused: \_\_\_\_\_.

**Oath to accused for guilty plea inquiry**

SCM: Do you (swear) (affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?

Accused: \_\_\_\_\_.

SCM: Do you have any questions about the meaning and effect of your pleas of guilty?

Accused: \_\_\_\_\_.

SCM: Do you believe that you understand the meaning and effect of your pleas of guilty?

Accused: \_\_\_\_\_.

**Determination of providence of pleas of guilty**

***[Note 16. Pleas of guilty may not be accepted unless the summary court-martial finds that they are made voluntarily and with understanding of their meaning and effect, and that the accused has knowingly, intelligently, and consciously waived the rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses. Pleas of guilty may be improvident when the accused makes statements at any time during the trial which indicate that there may be a defense to the offense(s), or which are otherwise inconsistent with an admission of guilt. If the accused makes such statements and persists in them after questioning, then the summary court-martial must reject the accused's guilty pleas and enter pleas of not guilty for the accused. Turn to the section entitled "Procedures-Not Guilty Pleas" and continue as indicated. If (the) (any of the) accused's pleas of guilty are found provident, the summary court-martial should announce findings as follows.]***

**Acceptance of guilty pleas**

SCM: I find that the pleas of guilty are made voluntarily and with understanding of their meaning and effect. I further specifically find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, I find the pleas are provident, and I accept them. However, you may ask to take back your guilty pleas at any time before the sentence is announced. If you have a sound reason for your request, I will grant it. Do you understand that?

Accused: \_\_\_\_\_.

**If any not guilty pleas remain**

***[Note 17. If no pleas of not guilty remain, go to note 26 of this Guide. If the accused has changed pleas of guilty to not guilty, if the summary court-martial has entered pleas of not guilty to any charge(s) and specification(s), or if the accused has pleaded not guilty to any of the offenses or pleaded guilty to a lesser included offense, proceed as follows.]***

**Witnesses for the accused**

SCM: If there are witnesses you would like to call to testify for you, give me the name, rank, and organization or address of each, and the reason you think they should be here, and I will arrange to have them present if their testimony would be material. Do you want to call witnesses?

Accused: \_\_\_\_\_.

**Calling witnesses**

*[Note 18. The summary court-martial should estimate the length of the case and arrange for the attendance of witnesses. The prosecution evidence should be presented before evidence for the defense.]*

SCM: I call as a witness \_\_\_\_\_.

**Witness oath**

**[To the witness, both standing]** Raise your right hand. Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (so help you God)? **[Do not use the phrase, "so help you God," if the witness prefers to affirm.]**

Witness: \_\_\_\_\_.

SCM: Be seated. State your full name, rank, organization, and armed force ([or if a civilian witness] full name, address, and occupation).

Witness: \_\_\_\_\_.

*[Note 19. The summary court-martial should question each witness concerning the alleged offense(s). After direct examination of each witness, the accused must be given an opportunity to cross-examine. If the accused declines to cross-examine the witness, the summary court-martial should ask any questions that it feels the accused should have asked. If cross-examination occurs, the summary court-martial may ask questions on redirect examination and the accused may ask further questions in recross-examination.]*

**[Note 20. After each witness has testified, instruct the witness as follows.]**

SCM: Do not discuss this case with anyone except the accused, counsel, or myself until after the trial is over. Should anyone else attempt to discuss this case with you, refuse to do so and report the attempt to me immediately. Do you understand that?

Witness: \_\_\_\_\_.

SCM: **[To the witness]** You are excused.

**Recalling witnesses**

*[Note 21. Witnesses may be recalled if necessary. A witness who is recalled is still under oath and should be so reminded.]*

*[Note 22. After all witnesses against the accused have been called and any other evidence has been presented, the summary court-martial will announce the following.]*

SCM: That completes the evidence against you. I will now consider the evidence in your favor.

**Presentation of defense case** **[Note 23. Witnesses for the accused should now be called to testify and other evidence should be presented. Before the defense case is terminated the summary court-martial should ask the accused if there are other matters the accused wants presented. If the accused has not testified, the summary court-martial should remind the accused of the right to testify or to remain silent.]**

**Closing argument** SCM: I have now heard all of the evidence. You may make an argument on this evidence before I decide whether you are guilty or not guilty.

**Deliberations of findings** **[Note 24. The court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]**

SCM: The court-martial is closed so that I may review the evidence. Wait outside the courtroom until I recall you.

**[Note 25. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. It may not consider any facts which were not admitted into evidence, such as a confession or admission of the accused which was excluded because it was taken in violation of Mil. R. Evid. 304. The summary court-martial may find the accused guilty of only the offense(s) charged, a lesser included offense, or of an offense which does not change the identity of an offense charged or a lesser included offense thereof.]**

**[Note 26. The summary court-martial should recall the accused, who will stand before the court-martial when findings are announced. All findings including any findings of guilty resulting from guilty pleas, should be announced at this time. The following forms should be used in announcing findings.]**

**Announcing the findings**

SCM:

*Not guilty of all offenses* I find you of (the) (all) Charge(s) and Specification(s): Not Guilty.

*Guilty of all offenses* I find you of (the) (all) Charge(s) and Specification(s): Guilty.

*Guilty of some, but not all offenses* I find you of (the) Specification (\_\_\_\_) of (the) Charge (\_\_\_\_): Not Guilty; of (the) Specification (\_\_\_\_) of (the) Charge (\_\_\_\_): Guilty; of (the) Charge (\_\_\_\_): Guilty.

*Guilty of lesser included offense or with exceptions and substitutions* I find you of (the) Specification (\_\_\_\_) of (the) Charge (\_\_\_\_): Guilty, except the words \_\_\_\_\_ and \_\_\_\_\_; (substituting therefor, respectively, the words \_\_\_\_\_ and \_\_\_\_\_;) of the excepted words: Not Guilty; (of the substituted words: Guilty;) of the Charge: (Guilty) (Not Guilty, but Guilty of a violation of Article \_\_\_\_\_, FCMJ, a lesser included offense).

**Entry of findings**

**[Note 27. The summary court-martial shall note all findings on the record of trial.]**

**Procedure if total acquittal**

**[Note 28. If the accused has been found not guilty of all charges and specifications, adjourn the court martial, excuse the accused, complete the record of trial, and return the charge sheet, personnel records, allied papers, and record of trial to the convening authority.]**

**Procedure of any findings of guilty**

**[Note 29. If the accused has been found guilty of any offense, proceed as follows.]**

**Presentence procedure**

SCM: I will now receive information in order to decide on an appropriate sentence. Look at the information concerning you on the front page of the charge sheet. Is it correct?

**[Note 30. If the accused alleges that any of the information is incorrect, the summary court-martial must determine whether it is correct and correct the charge sheet, if necessary.]**

**[Note 31. Evidence from the accused's personnel records, including evidence favorable to the accused, should now be received in accordance with R.C.M. 1001(b)(2). These records should be shown to the accused.]**

Accused: Do you know any reason why I should not consider these?

\_\_\_\_\_.

**[Note 32. The summary court-martial shall resolve objections under R.C.M. 1002(b)(2) and the Military Rules of Evidence and then proceed as follows. See also R.C.M. 1001(b)(3), (4), and (5) concerning other evidence which may be introduced.]**

**Extenuation and mitigation.**

SCM: In addition to the information already admitted which is favorable to you, and which I will consider, you may call witnesses who are reasonably available, you may present evidence, and you may make a statement. This information may be to explain the circumstances of the offense(s), including any reasons for committing the offense(s), and to lessen the punishment for the offense(s) regardless of the circumstances. You may show particular acts of good conduct or bravery, and evidence of your reputation in the service for efficiency, fidelity, obedience, temperance, courage, or any other trait desirable in a good Servicemember. You may call available witnesses or you may use letters, affidavits, certificates of military and civil officers, or other similar writings. If you introduce such matters, I may receive written evidence for the purpose of contradicting the matters you presented. If you want me to get some military records that you would otherwise be unable to obtain, give me a list of these documents. If you intend to introduce letters, affidavits, or other documents, but you do not have them, tell me so that I can help you get them. Do you understand that?

Accused: \_\_\_\_\_.

**Rights of accused to testify, remain silent, and make an unsworn statement**

SCM: I informed you earlier of your right to testify under oath, to remain silent, and to make an unsworn statement about these matters. Do you understand these rights?

Accused: \_\_\_\_\_.

SCM: Do you wish to call witnesses or introduce anything in writing?

Accused: \_\_\_\_\_.

**[Note 33. If the accused wants the summary court-martial to obtain evidence, arrange to have the evidence produced as soon as practicable.]**

**[Note 34. The summary court-martial should now receive evidence favorable to the accused. If the accused does not produce evidence, the summary court-martial may do so if there are matters favorable to the accused which should be presented.]**

SCM: Do you wish to testify or make an unsworn statement?

Accused: \_\_\_\_\_.

**Questions concerning pleas of guilty**

**[Note 35. If as a result of matters received on sentencing, including the accused's testimony or an unsworn statement, any matter is disclosed which is inconsistent with the pleas of guilty, the summary court-martial must immediately inform the accused and resolve the matter. See Note 16.]**

**Argument on sentence**

SCM: You may make an argument on an appropriate sentence.

Accused: \_\_\_\_\_.

**Deliberations prior to announcing sentence**

**[Note 36. After receiving all matters relevant to sentencing, the summary court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]**

**Closing the court-martial**

SCM: This court-martial is closed for determination of the sentence. Wait outside the courtroom until I recall you.

**[Note 37. See Appendix 11 concerning proper form of sentence. Once the summary court-martial has determined the sentence, it should reconvene the court-martial and announce the sentence as follows.]**

**Announcement of sentence**

SCM: Please rise. I sentence you to \_\_\_\_\_.

**[Note 38. If the sentence includes confinement, advise the accused as follows.]**

You have the right to request in writing that [name of convening authority] defer your sentence to confinement. Deferment is not a form of clemency and is not the same as suspension of a sentence. It merely postpones the running of a sentence to confinement. Your sentence of confinement will not begin until the sentence has been approved by TAG-FL or his designee.

**[Note 39. Whether or not the sentence includes confinement, advise the accused as follows.]**

You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and convening authority approves an extension of up to 20 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by Staff Judge Advocate of [Servicemember's MACOM/MAJCOM]. Do you understand these rights?

Accused: \_\_\_\_\_.

**Adjourning the court-martial**

SCM: This court-martial is adjourned.

**Entry on charge sheet**

***[Note 40. Record the sentence in the record of trial, inform the convening authority of the findings, recommendations for suspension, if any, and any deferment request. If the sentence includes confinement, arrange for the delivery of the accused to the accused's commander, or someone designated by the commander, for appropriate action. Ensure that the commander is informed of the sentence. Complete the record of trial and forward to the convening authority.]***

## APPENDIX D

**FLORIDA ARMY NATIONAL GUARD  
GUIDE FOR ADMINISTRATION OF  
NONJUDICIAL PUNISHMENT UNDER ARTICLE 15, FCMJ**

General Note to Commander: This guide is designed to ensure that the proceedings comply with all legal requirements of the FCMJ. It contemplates a three step process, conducted in the presence of the member, consisting of (1) notification, (2) hearing (that may be omitted if the member admits guilt), and (3) imposition of punishment (if the findings result in a determination of guilt). It is not the purpose of this guide to answer all questions which may arise during a trial. When this guide, the Florida National Guard Regulation 27-10, the Manual for Courts-Martial, and other legal materials available fail to provide sufficient information concerning law or procedure, the Commander should seek advice on these matters from a Judge Advocate.

The Commander should become familiar with this guide before using it. Instructions for the Commander are contained in **[brackets]**, and should not be read aloud. Language in **(parentheses)** reflects optional or alternative language. The Commander should read the appropriate language aloud.

LEFT BLANK INTENTIONALLY

**Section 1 . Notification**

[If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this provision should be appropriately modified (see note 11d, below).]

CO:

*As your commander, I have disciplinary powers under Article 15 of the FCMJ. I have received a report that you violated the Florida Code of Military Justice, and I am now considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings I will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the FCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.*

[**Note 1.** Wait for the member to read items 1 and 2 of DA Form 2627. Allow him to retain copy five of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it.]

CO:

*Do you understand item 1? Do you understand the offense(s) you are reported to have committed?*

Member: (Yes) (No)

[**Note 2.** If the member does not understand the offense(s), explain the offense(s) to him. Reference may be made to the FCMJ Punitive Article contained in the FNG Reg 27-10, which contains an explanation of each of the punitive articles together with the essential factual elements necessary to constitute the offense.]

CO:

*Do you understand item 2? Do you have any questions about your rights in these proceedings?*

Member: (Yes) (No)

[**Note 3.** If the member does not understand his rights, explain them in greater detail. If the member asks you a question you cannot answer, recess the proceedings. You can probably find the answer in one of these sources:

Article 15, FCMJ  
Chapter 3, FNG Reg 27-10

If you cannot find the answer in one of those sources, contact the office of your servicing Staff Judge Advocate.]

CO:

*There some decisions you have to make:*

*a. You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. I would then have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial, you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.*

*b. If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in "defense," "extenuation," and/or "mitigation." Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence in your behalf.*

*(1) Evidence in "defense" are facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in "defense," you can still present evidence in "extenuation" or "mitigation."*

*(2) Evidence in "extenuation" are circumstances surrounding the offense, showing that the offense was not very serious.*

*(3) Evidence in "mitigation" are facts about you, showing that you are a good Soldier and that you deserve light punishment.*

*c. You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.*

*d. Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?*

Member: (Yes) (No)

CO:

*If you do not demand trial by court-martial and after you have presented your evidence, I am convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you under Article 15 of the FCMJ would be as follows:*

- a. Verbal or written reprimand;*
- b. Extra duty, not to exceed 14 consecutive dates of Active Duty (State Active Duty, Annual Training, etc.), or 14 consecutive Unit Training Assemblies ;*
- c. Restriction to the armory, training site, or other specified limits, with or without suspension from duty, not to exceed 14 consecutive days of Active Duty, or 14 consecutive UTAs;*
- d. Fines not to exceed \$200.00 for any given NJP;*
- e. Reduction by one grade of a member whom the commander had the authority to promote; or*
- f. Any combination of the above, except that an imposition of extra duty and restriction must be concurrent and cannot total more than 14 days.*

**[Note 4:** If using summarized NJP, substitute the above punishments as follows:

- (A) Extra duties for 7 days.
- (B) Restriction for 7 days.
- (C) Verbal reprimand or admonition.
- (D) Any combination of the above.

CO:

*You should compare this punishment with the punishment you could receive in a court- martial.*

**[Note 5.** If the member requests to be informed of the maximum court-martial sentence(s), you may advise him that the maximum possible punishments for courts-martial under the FCMJ are as follows:

**General Courts-Martial:**

- 1) a fine not exceeding \$500;
- 2) confinement not in excess of 200 days;
- 3) forfeiture of all pay and allowances;
- 4) reprimand;
- 5) dismissal, or dishonorable discharge from the service;
- 6) reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel.
- 7) Any two or more of such punishments may be combined in the sentence.

**Special Courts-Martial**

- 1) a fine not exceeding \$300;
- 2) confinement not in excess of 100 days;
- 3) forfeiture of all pay and allowances;
- 4) reprimand;
- 5) bad-conduct discharge from the service (when so empowered);
- 6) reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel.
- 7) Any two or more of such punishments may be combined in the sentence.

**Summary courts-martial**

- 1) a fine not in excess of \$200 per offense;
- 2) confinement not in excess of 25 days;
- 3) forfeiture of pay and allowances;
- 4) reduction by one grade of members whom the convening authority had the authority to promote to their present grade.
- 5) Any two or more of such punishments may be combined in the sentence, except that confinement may not be combined with a fine.

[You should not inform the member of the particular punishment you may consider imposing until all the evidence has been considered.].

CO:

*As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is available at \_\_\_\_\_ - Would you like to talk to an attorney before you make your decisions?*

Member: (Yes) (No)

[**Note 6.** If the member desires to talk to an attorney, arrange through the Office of SJA, JFHQ-FL, for the consultation to take place. The member should be encouraged to consult the attorney promptly. Inform the member that consultation with an attorney may be by telephone. The member should be advised that he is to notify you if any difficulty is encountered in this undertaking. In summarized proceedings, there is no right to consult with counsel. But a Commander may allow the Soldiers to do if requested.]

CO:

*You now have 48 hours to think about what you should do in this case. You may advise me of your decision at any time within the 48-hour period. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I can continue with these Article 15 proceedings even without your consent. Do you understand?*

Member: (Yes) (No)

[**Note 7:** In the event of a delay, and upon request, the Commander may allow additional time to allow the Soldier to contact a military attorney.]

CO:

*You are now dismissed.*

**[Note 8.** At this point, the proceedings should be recessed unless the Soldier affirmatively indicates that he has made a decision and does not want additional time or to consult with an attorney. In the event the member does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, the imposing commander may continue the proceedings. In such instances, the Soldier will be informed that failure to complete and sign item 3 may be treated as voluntary withdrawal of any oral demand for trial. If the Soldier persists in his refusal and punishment is imposed, in addition to recording the punishment, the following entry will be made in item 4, DA Form 2627: "Advised of his rights, the Soldier (did not demand trial during the decision period)(refused to (complete)(sign) item 3.)" When you resume the proceedings, begin at item 3, DA Form 2627.]

CO:

*Do you demand trial by court-martial?*

Member: (Yes) (No)

**[Note 9.** If the answer is YES, continue as follows:]

CO:

*Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed.*

**[Note 10.** If the answer is NO, continue as follows:]

CO:

*An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated members of the chain of command, available witnesses and a spokesperson, if designated, will be present. Do you request an open hearing?*

Member: (Yes) (No)

CO:

*Do you wish to be accompanied by a spokesperson?*

Member: (Yes) (No)

CO:

*Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offenses(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?*

Member: (Yes) (No)

CO:

*Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.*

**[Note 11:**

**a. Wait until the member initials the blocks and signs and dates the form. If the answers to all the questions are NO, you may proceed to impose punishment.**

**b. If the answer regarding witnesses and evidence is yes, and the member is prepared to present evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier, and destroy all copies of DA Form 2627. If are convinced beyond a reasonable doubt that the Soldier committed the offense(s), and deserves punishment, proceed to impose punishment as appropriate.**

**c. If the Solder needs additional time to gather his evidence, give the Soldier a reasonable period of time to gather the evidence. Tell the Soldier when the proceedings will resume and recess the proceedings. A reasonable period of time for these purposes would ordinarily be until the following MUTA during IDT periods and would vary depending on circumstances during AT periods. Consult your serving JA if you have questions on this subject.**

**d. If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the Soldier's evidence. Ensure that the Soldier has the opportunity he deserves to present any evidence. Ask the Soldier, "Do you have any further evidence to present?" If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the Solder committed the offense(s) and deserves to be punished, impose punishment as appropriate.]**

**Section 2 . Imposition of Punishment**

CO:

*I have considered all the evidence. I am convinced that you committed the offense(s) of \_\_\_\_\_ . I impose the following punishment(s): \_\_\_\_\_ [Announce punishment].*

**[Note 12. After you have imposed punishment, complete items 4, 5, and 6 of DA Form 2627, and sign the blank below item 6].**

**Section 3 - Appellate Advice**

**[Note 13: Hand the DA Form 2627 to the member]**

CO:

*Read item 4 which lists the punishment I have just imposed on you. Now read item 6 which points out that you have a right to appeal this punishment to (title and organization of next superior authority under Article 15e). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days, excluding today. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (restriction or extra duties), at your request, will be interrupted pending the decision on the appeal. Do you understand your right to appeal?*

Member: (Yes) (No)

CO:

*Do you desire to appeal?*

Member: (Yes) (No)

**[Note 14. If the answer is yes, go to Note 16. If the answer is no, continue as follows:]**

CO:

*If you do not want to appeal, initial block a in item 7 and sign the blank below item 7.*

**[Note: 15. Now give the member detailed orders as to how you want him to carry out the punishments.]**

CO:

*You are dismissed.*

**[Note 16. If the answer is yes, continue as follows:]**

CO:

*Do you want to submit any additional matters to be considered in an appeal?*

Member: (Yes) (No)

**[Note 17. If the answer is yes, go to Note 18. If the answer is no, continue as follows:]**

CO:

*Initial block b in item 7 and sign the blank below item 7. I will notify you when learn what action has been taken on your appeal. You are dismissed.*

**[Note 18. If the answer is yes, continue as follows;]**

CO:

*If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by \_\_\_\_\_ (specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initiating the box and signing the blank below. After you complete item 7, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). Do you understand?*

Member: (Yes) (No)

CO;

*You are dismissed.*

LEFT BLANK INTENTIONALLY

APPENDIX E  
ABBREVIATIONS AND ACRONYMS

1 <sup>st</sup> DCA	- First District Court of Appeal of Florida
AF	- Air Force
AFI	- Air Force Instruction
AFM	- Army Field Manual
AFMAN	- Air Force Manual
AGR	- Active/Guard Reserve
AR	- Army Regulation
AT	- Annual Training
AWOL	- Absent Without Leave
BCD	- Bad Conduct Discharge
CBJTC	- Camp Blanding Joint Training Center
CID	- Criminal Investigative Division
CJA	- Command Judge Advocate
COC	- Chain of Command
DA	- Department of the Army
DCSPER	- Deputy Chief of Staff for Personnel
DD	- Department of Defense
ETS	- Expiration of Term of Service
FCIC	- Florida Crimes Information Center
FCMJ	- Florida Code of Military Justice
Fla. Stat.	- Florida Statutes
FLANG	- Florida Air National Guard
FLARNG	- Florida Army National Guard
FLNG	- Florida National Guard (both Army and Air)
FRAP	- Florida Rules of Appellate Procedure
GCM	- General Court-Martial
IDT	- Inactive Duty Training
IO	- Investigating Officer
JA	- Judge Advocate
JFHQ-FL	- Joint Forces Headquarters-Florida
MACOM	- Major Command (Army)
MAJCOM	- Major Command (Air)
MCM	- Manual for Courts-Martial
MJS	- Military Justice System
MOS	- Military Occupational Specialty
MP	- Military Police (Army)

MPRJ	- Military Personnel Records Jacket
Mil. R. Evid.	- Military Rules of Evidence
MUTA	- Multiple Unit Training Assembly
NGR	- National Guard Regulation
NJP	- Non-Judicial Punishment
OMPF	- Official Military Personnel File
OSJA	- Office of the Staff Judge Advocate
POV	- Privately Owned Vehicle
R.C.M.	- Rules for Court-Martial
SAD	- State Active Duty
SCM	- Summary Court-Martial or Summary Court-Martial Officer
SF	- Security Forces (Air)
SJA	- Staff Judge Advocate
SPCM	- Special Court-Martial
SSJA	- State Staff Judge Advocate
SUTA	- Split Unit Training Assembly
TAG-FL	- The Adjutant General of Florida
UCMJ	- Uniform Code of Military Justice
UIF	- Unfavorable Information File
UPRG	- Unit Personnel Record Group
USC	- United States Code
USP&FO-FL	- United States Property & Fiscal Office-Florida
UTA	- Unit Training Assembly

APPENDIX F  
FLORIDA NATIONAL GUARD  
REPRODUCIBLE FORMS

LEFT BLANK INTENTIONALLY

JUSTIFICATION/CONSENT FOR SEARCH

TO: \_\_\_\_\_

DATE: \_\_\_\_\_

SUBJECT: Justification to Search

1. Justification is hereby given for the search of the property of \_\_\_\_\_,  
located at \_\_\_\_\_.

2. There is probable cause to justify this search for \_\_\_\_\_  
based upon the following information: \_\_\_\_\_  
\_\_\_\_\_.

3. This information was presented to me by \_\_\_\_\_.  
I have determined the information to be reliable based upon \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_

Commander

Unit

-----  
SUBJECT: Consent to Search

I, \_\_\_\_\_, hereby give my consent for the search of  
my property located at \_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Servicemember's Signature

\_\_\_\_\_  
Servicemember's Name (Print)

SUBPOENA

Summary Court-Martial of the Florida National Guard

TO: \_\_\_\_\_

You are hereby summoned and required to appear on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_ o'clock \_\_.m. (Complete 1 or 2 below, as applicable.)

1. Before \_\_\_\_\_ designated to take your deposition.
2. Before a Summary Court-Martial of the Florida National Guard at \_\_\_\_\_ pursuant to Court-Martial Convening Order No. \_\_\_ of \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_, to testify as a witness for the \_\_\_\_\_ in the case of the Florida National Guard vs. \_\_\_\_\_ and bring with you \_\_\_\_\_. Failure to appear is punishable as contempt by imprisonment. See Section 250.39, Fla. Stat.

Subscribed at \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
Summary Court-Martial Officer/  
President of the Court/Military  
Judge

Received this Subpoena on the \_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_, and executed the same on the \_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_, by personal delivery of a true and correct copy of the foregoing subpoena to \_\_\_\_\_.

\_\_\_\_\_  
Sheriff, \_\_\_\_\_ County, Florida

BY \_\_\_\_\_  
Deputy Sheriff

JUSTIFICATION/CONSENT FOR SEARCH

TO: \_\_\_\_\_

DATE: \_\_\_\_\_

SUBJECT: Justification to Search

Justification is hereby given for the search of the property of \_\_\_\_\_,  
located at \_\_\_\_\_.

There is probable cause to justify this search for \_\_\_\_\_  
based upon the following information: \_\_\_\_\_  
\_\_\_\_\_.

This information was presented to me by \_\_\_\_\_.  
I have determined the information to be reliable based upon \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_

Commander

Unit

-----  
SUBJECT: Consent to Search

I, \_\_\_\_\_, hereby give my consent for the search of my property located at  
\_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Servicemember's Signature

\_\_\_\_\_  
Servicemember's Name (Print)

NOTICE OF TRIAL BY COURT-MARTIAL

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that charges and specifications, of which a copy is attached, have been duly referred for trial to a Summary Court-Martial convened by Court-Martial Convening Order No. \_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, and that said Court will meet at the \_\_\_\_\_ Armory located at \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ o'clock in the \_\_.m. to proceed with your trial on said charges, and you are required then and there to appear in person before said Court.

Dated the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
Summary Court-Martial Officer  
or  
Trial Counsel



LEFT BLANK INTENTIONALLY

## APPENDIX G

### SELECTED PORTIONS OF CHAPTER 250, FLORIDA STATUTES RELATED TO THE FLORIDA CODE OF MILITARY JUSTICE

#### **250.35 Courts-Martial.--**

- (1) The Uniform Code of Military Justice, 10 U.S.C. ss. 801 et seq., and the Manual for Courts-Martial (2002 Edition) are adopted for use by the Florida National Guard, except as otherwise provided by this chapter.
- (2) Courts-martial may try any member of the Florida National Guard for any crime or offense made punishable by the Uniform Code of Military Justice (2002 Edition), except that a commissioned officer, warrant officer, or cadet may not be tried by summary courts-martial.
- (3) Courts-martial in the state shall be of three kinds, namely: general courts-martial, special courts-martial, and summary courts-martial. General courts-martial and special courts-martial shall be tried by a military judge and a panel of officers as designated in applicable National Guard regulations. However, a panel may include enlisted members, at the request of an enlisted defendant. The military judge must be qualified by attendance at appropriate Judge Advocate General schools and must be certified as qualified by the Adjutant General of Florida. In a general and special court-martial, the defendant may waive trial by panel and request trial by military judge alone. The granting of such waiver shall be in the military judge's discretion.
- (4) General courts-martial in the Florida National Guard may be convened by order of the President of the United States, the Governor, or the Adjutant General as delegated by the Governor, and such courts may adjudge a fine not exceeding \$500, confinement not in excess of 200 days; forfeiture of all pay and allowances; reprimand, dismissal, or dishonorable discharge from the service; and reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel. Any two or more of such punishments may be combined in the sentence authorized in this section.
- (5) When not in the active service of the United States, the commanding officer of each major command of the Florida National Guard or his superior commander may convene special courts-martial empowered to adjudicate a bad conduct discharge from the service, subject to the procedural protections provided in 10 U.S.C. s. 819. Special courts-martial with bad conduct discharge authority have the same powers of punishment as do general courts-martial, except that fines adjudged by special courts-martial may not exceed \$300 and confinement may not exceed 100 days. Special courts-martial with bad conduct discharge authority may adjudicate a bad conduct discharge from the service, but may not adjudicate a dismissal or dishonorable discharge from the service.
- (6) When not in the active service of the United States, the commanding officer of each garrison, fort, post, camp, air base, auxiliary air base, any other place where troops are on duty, division, brigade, group, regiment, battalion, wing, or squadron may convene special courts-

martial for his command; but such special courts-martial may be convened by superior commanders when advisable. Special courts-martial have the same powers of punishment as general courts-martial, except that fines adjudged by special courts-martial may not exceed \$300 and confinement may not exceed 100 days, and dismissal or discharge from the service may not be adjudicated.

(7) When not in the active service of the United States, the commanding officer of each battalion, higher headquarters, or similar type unit may convene summary courts-martial for such place or command. Any person who may convene a general court-martial or special court-martial may convene a summary court-martial. Summary courts-martial may adjudge a fine not in excess of \$200 per offense, confinement not in excess of 25 days, forfeiture of pay and allowances, and reduction by one grade of members whom the convening authority had the authority to promote to their present grade. Any two or more of such punishments may be combined in the sentence authorized to be imposed by such courts, except that confinement may not be combined with a fine.

(8) When not in the active service of the United States, commanders may impose nonjudicial punishment in accordance with 10 U.S.C. s. 815, except that punishment may not exceed:

(a) Oral or written reprimand.

(b) Extra duty for 14 days.

(c) Restriction for 14 days.

(d) Fines of \$200.

(e) Reduction by one grade of a member whom the commander had the authority to promote.

(f) Any combination of paragraphs (a)-(e), except that a combination of punishment imposed under paragraphs (b) and (c) may not exceed 14 days.

(9) A finding of guilt and the sentence of a summary court-martial may be appealed to the convening authority. If a sentence of imprisonment has been adjudged, the findings and sentence may be appealed to the Adjutant General.

(10)(a) A finding of guilt and the sentence of a court-martial convened under this chapter, as approved by the convening authority and the Adjutant General if a sentence of imprisonment has been adjudged, may be appealed to the First District Court of Appeal.

(b) Any dismissal of a general or special court-martial by the military judge which does not violate the defendant's constitutional rights may be appealed by the Florida National Guard to the First District Court of Appeal.

(11) When the Florida National Guard is not in the active service of the United States, a sentence of dismissal from the service or dishonorable discharge from the service, imposed by court-martial, may not be executed until approved by the Governor.

### **250.351 Court-martial; jurisdiction.--**

(1) Members of the Florida National Guard are subject to this chapter and the Uniform Code of Military Justice at all times during their enlistment or appointment, whether serving in this state or outside the state.

(2) A court-martial or court of inquiry may be convened and held in a unit of the Florida National Guard serving outside the state, and the court has the same jurisdiction and powers as if the court-martial or court of inquiry were held within the state. An offense committed outside the state may be tried and punished outside the state or within the state.

### **250.36 Mandates and process.--**

(1) Military courts may issue all process and mandates, including writs, warrants, and subpoenas, necessary to carry out the powers vested in the courts. Such mandates and process may be directed to the sheriff of any county and must be in the form prescribed by the Adjutant General in the rules issued by him under this chapter. All officers to whom such mandates and process are directed must execute the same and make returns of their acts thereunder according to the requirements of the form of process. Any sheriff or other officer who neglects or refuses to perform the duty enjoined upon him by this chapter is subject to the same liabilities, penalties, and punishments as are prescribed by the law for neglect or refusal to perform any other duty of his office.

(2) When not in the active service of the United States, the Adjutant General, or his designee, or a military judge of the Florida National Guard may issue a pretrial confinement warrant for the purpose of securing the presence of an accused at trial. The warrant must be directed to the sheriff of the county, directing the sheriff to arrest the accused and bring the accused before the court for trial if the accused has disobeyed an order in writing to appear before the court which was delivered to the accused in person or mailed to the accused's last known address, along with a copy of the charges. Pretrial confinement may not exceed 48 hours. However, the Adjutant General or military judge may extend pretrial confinement for not more than 15 days in order to facilitate the presence of the accused at trial. For purposes of this subsection, the term "military judge" does not include a summary court-martial officer who is not qualified to act as a military judge in general or special courts-martial.

(3) When not in the active service of the United States, the Adjutant General, or his designee, or a military judge of the Florida National Guard may issue subpoenas and subpoenas duces tecum and enforce by attachment the attendance of witnesses and the production of documents and other items of evidentiary value.

(4) When a sentence of confinement is imposed by any court-martial of the Florida National Guard, the Adjutant General or his designee whose approval makes effective the sentence imposed by the court-martial shall issue a warrant directing the sheriff of the appropriate county to take the convicted person into custody and confine him in the jail of such county for the period specified in the sentence of the court. Any sheriff receiving such

warrant must promptly execute the warrant by taking the convicted person into custody and confining him in jail. The sheriff or jailer in charge of any county jail shall receive any person committed for confinement in such jail under proper process from a court-martial, and provide for the care, subsistence, and safekeeping of such prisoner just as the sheriff or jailer would a prisoner properly committed for custody under the sentence of any civil court.

(5) All sums of money collected through fines adjudged by a general, special, or summary court-martial or through the imposition of nonjudicial punishment of the Florida National Guard shall be paid over at once by the officer collecting the fine to the commanding officer of the organization to which the member belongs and be deposited in accordance with s. 250.40(5)(c)1.

### **250.37 Expenses of courts-martial.--**

(1) All expenses incurred in a court-martial proceeding, including the payment of court reporters, sheriff's fees for service of warrants, summons, subpoenas, and all other necessary and lawful fees to civil officers for service, and witness fees at the same rate allowed by law in criminal cases, together with the pay, subsistence, and necessary expenses of the members of the court, shall, except as provided in subsection (4), be paid by the state in the usual manner upon the approval of the Governor. Members of the court are entitled to reimbursement for travel expenses as provided in s. 112.061. Courts-martial may subpoena any witness residing within the state to appear and testify before it, and the sheriff of any county upon receiving any subpoena issued by direction of a court-martial, and signed by the military judge or president thereof, shall make service and return of service as provided by law in criminal cases.

(2) The employment of a court reporter shall be authorized by the convening authority for all general courts-martial, and may be authorized by the convening authority for special courts-martial. When a court reporter is employed, he or she shall be paid upon the certificate of the military judge or president of the court and the approval of the Adjutant General from the military appropriation, such fees as are provided for official reporters.

(3) Fees for the service of all process issuing out of military courts and for the attendance of witnesses to attend such courts shall be the same as provided by law for the service of similar process issued by the civil courts of the state.

(4) In trials by summary court, the sheriff's costs and fees, including costs of subsistence of the Soldier, if sentenced to confinement, shall be paid by the county in which the summary court convenes and exercises its jurisdiction and powers. Such costs, fees, and subsistence charges to be made from the fine and forfeiture fund of any such county.

**SELECTED PORTIONS  
OF THE  
MILITARY RULES OF EVIDENCE**

**Rule 311. Evidence obtained from unlawful searches and seizures**

a. General rule. Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) Objection. The accused makes a timely motion to suppress or an objection to the evidence under this rule; and

(2) Adequate interest. The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces.

b. Exceptions.

(1) Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

(2) Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

(3) Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(a) The search or seizure resulted from an authorization to search, seize or apprehend issued by an individual competent to issue the authorization under Mil. R. Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority;

(b) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(c) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith shall be determined on an objective standard.

c. Nature of search or seizure. A search or seizure is “unlawful” if it was conducted, instigated, or participated in by:

(1) Military personnel. Military personnel or their agents and was in violation of the Constitution of the United States as applied to members of the armed forces, an Act of Congress applicable to trials by court-martial that requires exclusion of evidence obtained in violation thereof, or Mil. R. Evid. 312–317;

(2) Other officials. Other officials or agents of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States or any political subdivision of such a State, Commonwealth, or possession and was in violation of the Constitution of the United States, or is unlawful under the principles of law generally applied in the trial of criminal cases in the United States district courts involving a similar search or seizure; or

(3) Officials of a foreign government. Officials of a foreign government or their agents and was obtained as a result of a foreign search or seizure which subjected the accused to gross and brutal maltreatment. A search or seizure is not “participated in” merely because a person is present at a search or seizure conducted in a foreign nation by officials of a foreign government or their agents, or because a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign search or seizure.

d. Motions to suppress and objections.

(1) Disclosure. Prior to arraignment, the prosecution shall disclose to the defense all evidence seized from the person or property of the accused, or believed to be owned by the accused, that it intends to offer into evidence against the accused at trial.

(2) Motion or objection.

(a) When evidence has been disclosed under subdivision (d)(1), any motion to suppress or objection under this rule shall be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the motion or objection.

(b) If the prosecution intends to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment, the prosecution shall provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interest of justice.

(c) If evidence is disclosed as derivative evidence under this subdivision prior to arraignment, any motion to suppress or objection under this rule shall be made in accordance with the procedure for challenging evidence under (A). If such evidence has not been so disclosed prior to arraignment, the requirements of (B) apply.

(3) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the search or seizure, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(4) Rulings. A motion to suppress or an objection to evidence made prior to plea shall be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at the trial of the general issue or until after findings, but no such determination shall be deferred if a party's right to appeal the ruling is affected adversely. Where factual issues are involved in ruling upon such motion or objection, the military judge shall state essential findings of fact on the record.

e. Burden of proof.

(1) In general. When an appropriate motion or objection has been made by the defense under subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.

(2) Derivative evidence. Evidence that is challenged under this rule as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence ultimately would have been obtained by lawful means even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize or apprehend or a search warrant or an arrest warrant. Notwithstanding other provisions of this Rule, an apprehension made in a dwelling in a manner that violates R.C.M. 302(d)(2) and (e) does not preclude the admission into evidence of a statement of an individual apprehended provided (1) that the apprehension was based on probable cause, (2) that the statement was made subsequent to the apprehension at a location outside the dwelling, and (3) that the statement was otherwise in compliance with these rules.

(3) Specific motions or objections. When a specific motion or objection has been required under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

f. Defense evidence. The defense may present evidence relevant to the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the search or seizure giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

g. Scope of motions and objections challenging probable cause.

(1) Generally. If the defense challenges evidence seized pursuant to a search warrant or search authorization on the grounds that the warrant or authorization was not based upon probable cause, the evidence relevant to the motion is limited to evidence concerning the information actually presented to or otherwise known by the authorizing officer, except as provided in paragraph (2).

(2) False statements. If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, shall be entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion shall be granted unless the search is otherwise lawful under these rules.

h. Objections to evidence seized unlawfully. If a defense motion or objection under this rule is sustained in whole or in part, the members may not be informed of that fact except insofar as the military judge must instruct the members to disregard evidence.

i. Effect of guilty plea. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under the Fourth Amendment to the Constitution of the United States and Mil. R. Evid. 311-317 with respect to the offense whether or not raised prior to plea.

## **Rule 312. Body views and intrusions**

a. General rule. Evidence obtained from body views and intrusions conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

b. Visual examination of the body.

(1) Consensual. Visual examination of the unclothed body may be made with the consent of the individual subject to the inspection in accordance with Mil. R. Evid. 314(e).

(2) Involuntary. An involuntary display of the unclothed body, including a visual examination of body cavities, may be required only if conducted in reasonable fashion and authorized under the following provisions of the Military Rules of Evidence: inspections and inventories under Mil. R. Evid. 313; searches under Mil. R. Evid. 314(b) and 314(c) if there is a reasonable suspicion that weapons, contraband, or evidence of crime is concealed on the body of the person to be searched; searches within jails and similar facilities under Mil. R. Evid. 314(h) if reasonably necessary to maintain the security of the institution or its personnel; searches incident to lawful apprehension under Mil. R. Evid. 314(g); emergency searches under Mil. R. Evid. 314(i); and probable cause searches under Mil. R. Evid. 315. An examination of the unclothed body under this rule should be conducted whenever practicable by a person of the same sex as that of the person being examined; provided, however, that failure to comply with this requirement does not make an examination an unlawful search within the meaning of Mil. R. Evid. 311.

c. Intrusion into body cavities. A reasonable nonconsensual physical intrusion into the mouth, nose, and ears may be made when a visual examination of the body under subdivision (b) is permissible. Nonconsensual intrusions into other body cavities may be made:

(1) For purposes of seizure. When there is a clear indication that weapons, contraband, or other evidence or crime is present, to remove weapons, contraband, or evidence of crime discovered under subdivisions (b) and (c)(2) of this rule or under Mil. R. Evid. 316(d)(4)(C) if such intrusion is made in a reasonable fashion by a person with appropriate medical qualifications; or

(2) For purposes of search. To search for weapons, contraband, or evidence of crime if authorized by a search warrant or search authorization under Mil. R. Evid. 315 and conducted by a person with appropriate medical qualifications. Notwithstanding this rule, a search under Mil. R. Evid. 314(h) may be made without a search warrant or authorization if such search is based on a reasonable suspicion that the individual is concealing weapons, contraband, or evidence of crime.

d. Extraction of body fluids. Nonconsensual extraction of body fluids, including blood and urine, may be made from the body of an individual pursuant to a search warrant or a search authorization under Mil. R. Evid. 315. Nonconsensual extraction of body fluids may be made without such warrant or authorization, notwithstanding Mil. R. Evid. 315(g), only when there is clear indication that evidence of crime will be found and that there is reason to believe that the delay that would result if a warrant or authorization were sought could result in the destruction of the evidence. Involuntary extraction of body fluids under this rule must be done in a reasonable fashion by a person with appropriate medical qualifications.

e. Other intrusive searches. Nonconsensual intrusive searches of the body made to locate or obtain weapons, contraband, or evidence of crime and not within the scope of subdivisions (b) or (c) may be made only upon search warrant or search authorization under Mil. R. Evid. 315 and only if such search is conducted in a reasonable fashion by a person with appropriate medical qualifications and does not endanger the health of the person to be searched. Compelling a person to ingest substances for the purposes of locating the property described above or to compel the bodily elimination of such property is a search within the meaning of this section. Notwithstanding this rule, a person who is neither a suspect nor an accused may not be compelled to submit to an intrusive search of the body for the sole purpose of obtaining evidence of crime.

f. Intrusions for valid medical purposes. Nothing in this rule shall be deemed to interfere with the lawful authority of the armed forces to take whatever action may be necessary to preserve the health of a Servicemember. Evidence or contraband obtained from an examination or intrusion conducted for a valid medical purpose may be seized and is not evidence obtained from an unlawful search or seizure within the meaning of Mil. R. Evid. 311.

g. Medical qualifications. The Secretary concerned may prescribe appropriate medical qualifications for persons who conduct searches and seizures under this rule.

### **Rule 313. Inspections and inventories in the armed forces**

a. General rule. Evidence obtained from inspections and inventories in the armed forces conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

b. Inspections. An "inspection" is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or

vehicle. An inspection may include but is not limited to an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or air worthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty. An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband. An order to produce body fluids, such as urine, is permissible in accordance with this rule. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule. If a purpose of an examination is to locate weapons or contraband, and if: (1) the examination was directed immediately following a report of a specific offense in the unit, organization, installation, vessel, aircraft, or vehicle and was not previously scheduled; (2) specific individuals are selected for examination; or (3) persons examined are subjected to substantially different intrusions during the same examination, the prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this rule. Inspections shall be conducted in a reasonable fashion and shall comply with Mil. R. Evid. 312, if applicable. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected. Unlawful weapons, contraband, or other evidence of crime located during an inspection may be seized.

c. Inventories. Unlawful weapons, contraband, or other evidence of crime discovered in the process of an inventory, the primary purpose of which is administrative in nature, may be seized. Inventories shall be conducted in a reasonable fashion and shall comply with Mil. R. Evid. 312, if applicable. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this rule.

#### **Rule 314. Searches not requiring probable cause**

a. General rule. Evidence obtained from reasonable searches not requiring probable cause conducted pursuant to this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

b. Border searches. Border searches for customs or immigration purposes may be conducted when authorized by Act of Congress.

c. Searches upon entry to or exit from United States installations, aircraft, and vessels abroad. In addition to the authority to conduct inspections under Mil. R. Evid. 313(b), a commander of a United States military installation, enclave, or aircraft on foreign soil, or in foreign or international airspace, or a United States vessel in foreign or

international waters, may authorize appropriate personnel to search persons or the property of such persons upon entry to or exit from the installation, enclave, aircraft, or vessel to ensure the security, military fitness, or good order and discipline of the command. Such searches may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party. Failure to comply with a treaty or agreement, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceeding is not authorized by this subdivision.

d. Searches of government property. Government property may be searched under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use; but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

e. Consent searches.

(1) General rule. Searches may be conducted of any person or property with lawful consent.

(2) Who may consent. A person may consent to a search of his person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(3) Scope of consent. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(4) Voluntariness. To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(5) Burden of proof. Consent must be shown by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the burden of proof.

f. Searches incident to a lawful stop.

(1) Stops. A person authorized to apprehend under R.C.M. 302(b) and others performing law enforcement duties may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him reasonably to conclude in light of his experience that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

(2) Frisks. When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. Contraband or evidence located in the process of a lawful frisk may be seized.

(3) Motor vehicles. When a person lawfully stopped is the driver or a passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if the official who made the stop has a reasonable belief that the person stopped is dangerous and that the person stopped may gain immediate control of a weapon.

g. Searches incident to a lawful apprehension.

(1) General rule. A person who has been lawfully apprehended may be searched.

(2) Search for weapons and destructible evidence. A search may be conducted for weapons or destructible evidence, in the area within the immediate control of a person who has been apprehended. The area within the person's "immediate control" is the area which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property; provided, that the passenger compartment of an automobile, and containers within the passenger compartment may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless whether the person apprehended has been removed from the vehicle.

(3) Examination for other persons.

(a) When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general

area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(b) Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

h. Searches within jails, confinement facilities, or similar facilities. Searches within jails, confinement facilities, or similar facilities may be authorized by persons with authority over the institution.

i. Emergency searches to save life or for related purposes. In emergency circumstances to save life or for a related purpose, a search may be conducted of persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

j. Searches of open fields or woodlands. A search of open fields or woodlands is not an unlawful search within the meaning of Mil. R. Evid. 311.

k. Other searches. A search of a type not otherwise included in this rule and not requiring probable cause under Mil. R. Evid. 315 may be conducted when permissible under the Constitution of the United States as applied to members of the armed forces.

### **Rule 315. Probable cause searches**

a. General rule. Evidence obtained from searches requiring probable cause conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

b. Definitions. As used in these rules:

(1) Authorization to search. An “authorization to search” is an express permission, written or verbal, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) Search warrant. A “search warrant” is an express permission to search and seize issued by competent civilian authority.

c. Scope of authorization. A search authorization may be issued under this rule for a search of:

(1) Persons. The person of anyone subject to military law or the law of war wherever found;

(2) Military property. Military property of the United States or of non-appropriated fund activities of an armed force of the United States wherever located;

(3) Persons and property within military control. Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) Nonmilitary property within a foreign country.

(a) Property owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense when situated in a foreign country. A search of such property may not be conducted without the concurrence of an appropriate representative of the agency concerned. Failure to obtain such concurrence, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311.

(b) Other property situated in a foreign country. If the United States is a party to a treaty or agreement that governs a search in a foreign country, the search shall be conducted in accordance with the treaty or agreement. If there is no treaty or agreement, concurrence should be obtained from an appropriate representative of the foreign country with respect to a search under paragraph (4)(B) of this subdivision. Failure to obtain such concurrence or noncompliance with a treaty or agreement, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311.

d. Power to authorize. Authorization to search pursuant to this rule may be granted by an impartial individual in the following categories:

(1) Commander. A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) Military judge. A military judge or magistrate if authorized under regulation prescribed by the Secretary of Defense or the Secretary concerned. An otherwise impartial authorizing official does not lose the character merely because he or she is present at the scene of a search or is otherwise readily available to persons who may

seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

e. Power to search. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

f. Basis for Search authorizations.

(1) Probable cause requirement. A search authorization issued under this rule must be based upon probable cause.

(2) Probable cause determination. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be search. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule shall be based upon any or all of the following:

(a) Written statements communicated to the authorizing officer;

(b) Verbal statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(c) Such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements.

g. Exigencies. A search warrant or search authorization is not required under this rule for a search based on probable cause when:

(1) Insufficient time. There is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(2) Lack of communications. There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with a person

empowered to grant a search warrant or authorization and there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(3) Search of operable vehicle. An operable vehicle is to be searched, except in the circumstances where a search warrant or authorization is required by the Constitution of the United States, this Manual, or these rules; or

(4) Not required by the Constitution. A search warrant or authorization is not otherwise required by the Constitution of the United States as applied to members of the armed forces. For purpose of this rule, a vehicle is “operable” unless a reasonable person would have known at the time of search that the vehicle was not functional for purposes of transportation.

h. Execution.

(1) Notice. If the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should when possible notify him of the act of authorization and the general substance of the authorization. Such notice may be made prior to or contemporaneously with the search. Failure to provide such notice does not make a search unlawful within the meaning of Mil. R. Evid. 311.

(2) Inventory. Under regulations prescribed by the Secretary concerned, and with such exceptions as may be authorized by the Secretary, an inventory of the property seized shall be made at the time of a seizure under this rule or as soon as practicable thereafter. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken. Failure to make an inventory, furnish a copy thereof, or otherwise comply with this paragraph does not render a search or seizure unlawful within the meaning of Mil. R. Evid. 311.

(3) Foreign searches. Execution of a search authorization outside the United States and within the jurisdiction of a foreign nation should be in conformity with existing agreements between the United States and the foreign nation. Noncompliance with such an agreement does not make an otherwise lawful search unlawful.

(4) Search warrants. Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable Act of Congress.

## **Rule 316. Seizures**

a. General rule. Evidence obtained from seizures conducted in accordance with this rule is admissible at trial if the evidence was not obtained as a result of an unlawful search and if the evidence is relevant and not otherwise inadmissible under these rules.

b. Seizure of property. Probable cause to seize property or evidence exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

c. Apprehension. Apprehension is governed by R.C.M. 302.

d. Seizure of property or evidence.

(1) Abandoned property. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(2) Consent. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Mil. R. Evid. 314.

(3) Government property. Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subdivision (e), unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided in Mil. R. Evid. 314(d), at the time of the seizure.

(4) Other property. Property or evidence not included in paragraph (1)-(3) may be seized for use in evidence by any person listed in subdivision (e) if:

(a) Authorization. The person is authorized to seize the property or evidence by a search warrant or a search authorization under Mil. R. Evid. 315;

(b) Exigent circumstances. The person has probable cause to seize the property or evidence and under Mil. R. Evid. 315(g) a search warrant or search authorization is not required; or

(c) Plain view. The person while in the course of otherwise lawful activity observes in a reasonable fashion property or evidence that the person has probable cause to seize.

(5) Temporary detention. Nothing in this rule shall prohibit temporary detention of property on less than probable cause when authorized under the Constitution of the United States.

e. Power to seize. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police, or shore patrol, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

f. Other seizures. A seizure of a type not otherwise included in this rule may be made when permissible under the Constitution of the United States as applied to members of the armed forces.

LEFT BLANK INTENTIONALLY

APPENDIX I  
FIGURES

<u>TITLE</u>	<u>PAGE</u>
Figure 1-1 – Commander’s Lawful and Unlawful Influences	11
Figure 2-1 – DA 3881 – Rights Warning Procedure/Waiver Certificate	25
Figure 2-2 – DA 2823 – Sworn Statement	27
Figure 2-3 – AF 1168 – Statement of Suspect/Witness/Complainant	29
Figure 2-4 – FNG 609 – Justification/Consent for Search	31
Figure 3-1 – DA 5109 – Request to Superior to Exercise Article 15, FCMJ, Jurisdiction	47
Figure 3-2 – DA 2627 – Record of Proceedings Under Article 15, FCMJ	48
Figure 3-3 – DA 2627-1 – Summarized Record of Proceedings Under Article 15, FCMJ	50
Figure 3-4 – DA 2627-2 – Record of Supplementary Action Under Article 15, FCMJ	52
Figure 3-5 – DA 5110 – Article 15 Reconciliation Log	53
Figure 3-6 – AF 3070 – Record of Nonjudicial Punishment Proceedings	67
Figure 3-7 – AF 366 – Records of Proceedings of Vacation of Suspended Nonjudicial Punishment	70
Figure 3-8 – AF 3212 – Records of Supplementary Action Under Article 15, FCMJ	72
Figure 4-1 – DD 458 – Charge Sheet	87
Figure 4-2 – DA 2-2 – Insert Sheet to DA Form 2-1, Record of Court-Martial Conviction	89
Figure 4-3 – DA 268 – Report to Suspend Favorable Personnel Actions (FLAG)	90
Figure 4-4 – FNG 611 – Notice of Trial by Court-Martial	91
Figure 4-5 – Sample Summary Court-Martial Convening Order	92
Figure 4-6 – FNG 636 – Fact Sheet	93
Figure 4-7 – FNG 603 – Subpoena	94
Figure 4-8 – FNG 612 – Rule to Show Cause	95
Figure 5-1 – DD 2329 – Record of Trial By Summary Court-Martial	105
Figure 6-1 – Sample Special/General Court-Martial Convening Order	113
Figure 7-1 – DD 457 – Investigating Officer’s Report	121

<u>TITLE</u>	<u>PAGE</u>
Figure 8-1 – Sample Legal Officer’s Recommendation to General Court-Martial Convening Authority	141
Figure 9-1 – Sample Notice of Appeal for Appellate Court	147