

**Section 1. Part II of the MCM is amended as follows:**

**(a) R.C.M. 104(a) is revised as follows:**

“(a) *General prohibitions.*

(1) *Convening authorities and commanders.*

(A) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish a court-martial or other military tribunal or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court-martial or tribunal, or with respect to any other exercise of the functions of the court-martial or tribunal or such persons in the conduct of the proceedings.

(B) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

~~(2) All persons subject to the UCMJ. No person subject to the UCMJ may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case or the action of any preliminary hearing officer or convening, approving, or reviewing authority with respect to such preliminary hearing officer's or authority's acts concerning the following: any decision to place a Servicemember into pretrial confinement; disposition decisions; rulings on pre-referral matters; findings at a preliminary hearing; convening a court-martial; decisions concerning plea agreements; selecting members; decisions concerning witness requests; taking action on any clemency or deferment request; or any appellate or post-trial review of a case.~~

(2) ~~(3)~~ *Scope.*

(A) *Instructions.* Paragraphs (a)(1) and (b)(2) of this rule do not prohibit general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial.

(B) *Court-martial statements.* Paragraphs (a)(1) and (b)(2) of this rule do not prohibit statements and instructions given in open session by the military judge or counsel.

(C) *Professional supervision.* Paragraphs (a)(1) and (b)(2) of this rule do not prohibit action by the Judge Advocate General concerned under R.C.M. 109.

(D) *Offense.* Paragraphs (a)(1) and (b)(2) of this rule do not prohibit appropriate action against a person for an offense committed while detailed as a military judge, counsel, or member of a court-martial, or while serving as individual counsel.

(E) *General statements regarding criminal activity or offenses.* Paragraphs (a)(1) and (b)(2) of this rule do not prohibit statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, do not advocate a particular court-martial finding or sentence, and do not relate to a particular accused.”

**(b) R.C.M. 104(b)(3) is added to immediately follow R.C.M. 104(b)(2) to read as follows:**

“(3) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.”

**(c) R.C.M. 104(c)(2) is added to immediately follow R.C.M. 104(c)(1) to read as follows:**

“(2) *Evaluation of military judge.*

(A) *General courts-martial.* Unless the general court-martial was convened by the

President or the Secretary concerned, neither the convening authority nor any member of the convening authority's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed to a general court-martial that relates to the performance of duty as a military judge.

(B) *Special courts-martial.* The convening authority may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to a special court-martial that relates to the performance of duty as a military judge. When the military judge is normally rated or the military judge's report is reviewed by the convening authority, the manner in which such military judge will be rated or evaluated upon the performance of duty as a military judge may be as prescribed in regulations of the Secretary concerned, which shall ensure the absence of any command influence in the rating or evaluation of the military judge's judicial performance."

**(d) The Analysis for R.C.M. 104 to appear in Appendix 15 of the MCM is amended by adding paragraphs at the end to read as follows:**

*"2024 Amendments:*

R.C.M. 104(a) is amended to remove a subparagraph entitled, "All persons subject to the UCMJ" as its provisions are duplicative of RCM 104(b)(2).

R.C.M. 104(b)(3) is based on Annex 1 of EO 14103 (July 28, 2023) and corrects a scrivener's error in Annex 2's amendment to R.C.M. 104.

R.C.M. 104(c)(2) is based on Annex 1 of EO 14103 (July 28, 2023) and corrects a scrivener's error in Annex 2's amendment to R.C.M. 104."

**(e) R.C.M. 305(h) is revised to read as follows:**

“(h) *Who may direct release from confinement.* Any commander of a confinee, an officer appointed under regulations of the Secretary concerned to conduct the review under R.C.M. 305(j) or (k), or, once charges for which the accused has been confined are~~have been~~ referred or, in a pre-referral proceeding conducted in accordance with R.C.M. 309, a military judge ~~detailed to the court martial to which the charges against the accused have been referred,~~ may direct release from pretrial confinement. For purposes of this subsection (R.C.M. 305(h)), “any commander” includes the immediate or higher commander of the confinee and the commander of the installation on which the confinement facility is located.”

**(f) The Analysis for R.C.M. 305 to appear in Appendix 15 of the MCM is amended by adding a new paragraph at the end to read as follows:**

“*2024 Amendment:* R.C.M. 305(h) is amended to explicitly authorize a military judge to order relief from pre-trial confinement pre-referral.”

**(g) R.C.M. 703(g)(3)(I) is revised as follows:**

“(I) *Relief.* If either a person subpoenaed or a victim named in a specification whose personal and confidential information has been subpoenaed under subparagraph (g)(3)(C)(ii) requests relief on grounds that compliance is unreasonable, oppressive, or prohibited by law, the military judge or, if before referral, a military judge detailed under Article 30a shall review the request and shall—

(i) order that the subpoena be modified or quashed, as appropriate; or

(ii) order the person to comply with the subpoena.”

**(h) The Analysis for R.C.M. 703 to appear in Appendix 15, MCM is amended by adding a new paragraph at the end to read as follows:**

“2024 Amendment: RCM 703(g)(3)(I) is amended to specifically provide that “a victim named in a specification whose personal and confidential information has been subpoenaed under subparagraph (g)(3)(C)(ii)” can request relief.”

**(i) R.C.M. 906(b)(12)(B) is revised as follows:**

“(B) *As applied to sentence.* Where the military judge finds that the unreasonable multiplication of charges requires a remedy that focuses more appropriately on punishment than on findings, the military judge may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding, the remedy shall be as set forth in R.C.M. 1002(b)~~R.C.M. 1002(d)(2)~~. A ruling on this motion ordinarily should be deferred until after findings are entered.”

**(j) The Analysis for R.C.M. 906 to appear in Appendix 15, MCM is amended by adding a new paragraph at the end to read as follows:**

“2024 Amendment: R.C.M. 906(b)(12)(B) is amended to cite R.C.M. 1002(b) instead of R.C.M. 1002(d)(2) as the governing remedy. The provisions in R.C.M. 1002(d)(2) were moved to R.C.M. 1002(b) by EO 14103 (July 28, 2023).”

**(k) R.C.M. 1201(h)(1)(B) is revised as follows:**

“(B) With respect to a general or special court-martial previously reviewed under paragraph (a)(1) or (2) where the Judge Advocate General determines the wavier or withdrawal was invalid under the law, order such a court-martial to be reviewed under R.C.M. 1203 by the Court of Criminal Appeals.”

**(l) The Analysis for R.C.M. 1201 to appear in Appendix 15, MCM is amended by adding a new paragraph at the end to read as follows:**

“2024 Amendment: R.C.M. 1201(h)(1)(B) is revised to ensure consistency with Article 69.”

**(m) R.C.M. 1301(a) is revised as follows:**

~~“(a) *Composition*. A summary court-martial is composed of one commissioned officer on active duty. Unless otherwise prescribed by the Secretary concerned, a summary court-martial shall be of the same armed force as the accused. Summary courts-martial shall be conducted in accordance with the regulations of the military Service to which the accused belongs. Whenever practicable, a summary court-martial should be an officer whose grade is not below lieutenant of the Navy or Coast Guard or captain of the Army, Marine Corps, Air Force, or Space Force. When only one commissioned officer is present with a command or detachment, that officer shall be the summary court-martial of that command or detachment. When more than one commissioned officer is present with a command or detachment, the convening authority may not be the summary court-martial of that command or detachment.”~~

**(n) R.C.M. 1301(e) is revised as follows:**

~~“(e) *Counsel*. The accused at a summary court-martial does not have the right to counsel. If the accused has counsel qualified under R.C.M. 502(d)(2), that counsel may be permitted to represent the accused at the summary court-martial if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it. The accused at a summary court-martial has a right to military defense counsel. The accused may waive the detailing or presence of defense counsel.”~~

**(o) The Discussion following R.C.M. 1301(e) is removed.**

**(p) The Analysis for R.C.M. 1301 to appear in Appendix 15, MCM is amended by adding new paragraphs at the end to read as follows:**

*“2024 Amendments:*

R.C.M. 1301(a) is amended by removing the final two sentences as they offered an

unnecessary restatement of Article 24(b).

R.C.M. 1301(e) is revised to provide an accused's right to military defense counsel at a summary court-martial. The revision contemplates the accused's ability to waive the detailing or presence of defense counsel, an option that can facilitate the prompt adjudication of the offense at a summary court-martial proceeding, which may be beneficial to an accused.

The Discussion following R.C.M. 1301(e), which highlighted the absence of a constitutional or statutory right to counsel at a summary court-martial, has been removed.”

**(q) R.C.M. 1302(a) is revised as follows:**

“(a) *Who may convene summary courts-martial.* Unless limited by competent authority, summary courts-martial may be convened by:

(1) Any person who may convene a general or special court-martial;

(2) The commander of a detached company or other detachment of the Army unless such commander is the only commissioned officer with the company or detachment;

(3) The commander of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force unless such commander is the only commissioned officer with the detached squadron or other detachment of the Air Force or corresponding unit of the Space Force;

(4) The commander or officer in charge of any other command when empowered by the Secretary concerned unless such commander or officer in charge is the only commissioned officer with the command; or

(5) A superior competent authority to any of the above unless such superior competent authority is the only commissioned officer with the command.”

**(r) The Discussion following R.C.M. 1302(c) is removed.**

**(s) The Analysis for R.C.M. 1302 to appear in Appendix 15, MCM is amended by adding a new paragraph at the end to read as follows:**

“2024 Amendment: R.C.M. 1302(a) is revised to preclude a summary court-martial convening authority from serving as the summary court-martial. The Discussion following R.C.M. 1302(c) is removed.”

**(t) R.C.M. 1304(b)(1)(M) is revised as follows:**

“(M) The maximum sentence ~~which~~that the summary court-martial may adjudge if the accused is found guilty of the offense or offenses alleged; ~~and~~”

**(u) R.C.M. 1304(b)(1)(N) is revised as follows:**

“The accused’s right to object to trial by summary court-martial; and”

**(v) A new R.C.M. 1304(b)(1)(O) is added to immediately follow R.C.M. 1304(b)(1)(N) to read as follows:**

“(O) Unless waived by the accused, the accused’s right to have detailed defense counsel present during the summary court-martial proceeding.”

**(w) R.C.M. 1304(b)(2) is amended as follows:**

(1) By redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G),  
and

(2) Adding a new R.C.M. 1304(b)(2)(B) to immediately follow R.C.M. 1304(b)(2)(A) to read as follows:

“(B) *Presence of defense counsel.*

(i) If the accused waives the right to have defense counsel present during the summary court-martial proceeding, the summary court-martial shall inquire into whether the waiver is knowing and voluntary.



(ii) Presence of defense counsel may be accomplished via remote means through the use of audiovisual technology only if the accused consents to the presence of counsel by remote means and there is the opportunity for confidential consultation with defense counsel during the summary court-martial proceeding.”

**(x) The Analysis for R.C.M. 1304 to appear in Appendix 15, MCM is amended by adding new paragraphs at the end to read as follows:**

*“2024 Amendments:*

R.C.M. 1301(b)(1) is amended to add a new subparagraph (b)(1)(O) providing that the preliminary proceeding for a summary court-martial will include informing the accused of the right to a detailed defense counsel at the proceeding unless waived.

R.C.M. 1301(b)(2)(B) is new. Subparagraph (b)(2)(B)(i) ensures that the accused’s waiver of the right to have defense counsel present is knowing and voluntary. Additionally, subparagraph (b)(2)(B)(ii) permits the defense counsel to be present via appropriate remote means upon the accused’s consent. This option may facilitate prompt adjudication of the offense, which can be beneficial to an accused.”

**Section 2. Part III of the Manual for Courts-Martial, United States is amended as follows:**

**(a) Mil. R. Evid. 513(a) is revised as follows:**

*“(a) General Rule.* A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication, including records of such a communication, made between the patient and a psychotherapist or an assistant to the psychotherapist; in a case arising under the Uniform Code of Military Justice; if such communication was made for the purpose of diagnosis; or treatment of the patient’s mental or emotional condition.”

**(b) The Analysis for Mil. R. Evid. 513 is amended by adding a new paragraph at the end to read as follows:**

“*2024 Amendment:* Mil. R. Evid. 513(a) is amended by adding the words “including records of such communications” to recognize the well-established principle that documentation of confidential communications is as privileged as testimonial evidence. *See, e.g., Colton v. United States*, 306 F.2d 633, 639 (2d Cir. 1962) (“Documentary evidence of confidential communications is necessarily privileged as much as testimonial evidence.”); *see also Upjohn v. United States*, 449 U.S. 383, 386, 388 (1981) (holding that the attorney-client privilege protected the communications involved in a case where said communications were contained in documents).”

**Section 3. Part IV of the Manual for Courts-Martial, United States is amended as follows:**

**Paragraph 58.d. starting with the words “Sample specifications” is redesignated as paragraph 58.e.**

**Section 4. Part V of the Manual for Courts-Martial, United States is amended as follows:**

**(a) Paragraphs 3 through 8 are redesignated as paragraphs 4 through 9.**

**(b) A new paragraph is added to immediately follow paragraph 2 to read as follows:**

**“3. Right to consult with counsel**

*a. Consultation before nonjudicial punishment proceeding.*

(i) Unless precluded by military exigencies, before the imposition of nonjudicial punishment, servicemembers have the right to consult with counsel, including as to the decision whether to demand trial by court-martial under paragraph 5.b. of this Part.

(ii) Servicemembers who do not have the right to demand trial under paragraph 4 of this Part have the right to consult with counsel prior to a personal appearance before the

nonjudicial punishment authority or person designated by the nonjudicial punishment authority under paragraph 5.c. of this Part.

(iii) The exercise of the right to consult with counsel pursuant to paragraph 3.a.(i) or (ii) of this Part shall not unreasonably delay the proceedings.

b. *Consultation after nonjudicial punishment is imposed.* Servicemembers have a right to consult with counsel regarding an appeal under paragraph 8.a. of this Part.”

**(c) The Analysis of Nonjudicial Punishment Procedure to appear in Appendix 18, UCMJ is revised as follows:**

- (1) By renumbering paragraphs 3 through 8 as paragraphs 4 through 9, and
- (2) Adding a new paragraph to immediately follow paragraph 2 to read as follows:

**“3. Right to consult with counsel**

*2024 Amendments:* Paragraph 3 is new and seeks to guarantee that, absent a military exigency precluding consultation before imposition of nonjudicial punishment, servicemembers are afforded an opportunity to consult with counsel concerning nonjudicial punishment while upholding the purpose and efficiency of nonjudicial punishment. The previous paragraphs 3 through 8 are redesignated as paragraphs 4 through 9.”