AMENDMENTS TO THE RULES FOR COURTS-MARTIAL SINCE 1984 (2025 Edition)

EDITED BY GREGORY E. MAGGS

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SUMMARY OF CONTENTS

PREFACE **2**

LINKS TO ALL EDITIONS OF THE MANUAL FOR COURTS-MARTIAL **3**

LINKS TO EXECUTIVE ORDERS AMENDING THE RULES FOR COURTS-MARTIAL **5**

EXPLANATORY NOTES **10**

COMPLETE TABLE OF CONTENTS **11**

AMENDMENTS TO THE RULES **31**

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PREFACE

Article 36 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 836, grants the President of the United States authority to prescribe "[p]retrial, trial, and post-trial procedures . . . for cases . . . triable by courts-martial." The 1951 edition of the Manual for Courts-Martial (M.C.M.) incorporated the new Uniform Code of Military Justice and used a paragraph style to prescribe court-martial practice and procedure. By 1980, this paragraph style was disfavored, and the Joint Service Committed on Military Justice began drafting a new set of rules. *See Manual for Courts-Martial, United States*, Introduction to Analysis of Rules for Courts-Martial app. 15 at A15-1 (2019 ed.).

In 1984, the President exercised his Article 36, UCMJ, authority by issuing an executive order that created the Rules for Courts-Martial (R.C.M.). *See* Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). The R.C.M. are a set of rules, analogous to the Federal Rules of Criminal Procedure, that "govern the procedures and punishments in all courts-martial and, whenever expressly provided, preliminary, supplementary, and appellate procedures and activities." R.C.M. 101. Since 1984, the President has issued more than twenty additional executive orders amending the R.C.M. A list of these executive orders, with links for finding them online, is included in this publication.

The large number of amendments to the R.C.M. sometimes makes it difficult for counsel and judges to determine which version of a rule applies to a case under consideration or applied in a past case. This publication attempts to address this difficulty by making it easier to track the amendments to the R.C.M. and find both current and previous versions of them.

In preparing and editing this publication, I had substantial help from Ben Forsgren, Cooper Millhouse, Stephen Paul, and Mari Vogel (my law clerks at the U.S. Court of Appeals for the Armed Forces), from Abe Finley (law clerk to the Clerk of the U.S. Court of Appeals for the Armed Forces), and from Thomas Albers-Fiedler, Min-Soo Choi, Crystal Clanton, Jackie Corbo, Janese Duley, Sebastian Napoli, and Patrick Walters (law student research assistants). Mr. Clark Price of the Central Legal Staff of the U.S. Court of Appeals for the Armed Forces also provided excellent assistance. I am grateful for all their hard work. Because I plan to produce future editions of this book as new amendments occur, I welcome any and all corrections of errors or suggestions for improvement.

I would also like to salute the Joint Service Committee on Military Justice, a working group of civilians and service members who drafted all the executive orders creating and amending the R.C.M. and who compiled the changes to the R.C.M. in the Manual for Courts-Martial. No one could review the hundreds of amendments, as I have done in preparing this work, without admiring the Joint Service Committee's drafting skill, policy choices, and meticulous care.

No copyright is claimed on this work. Please feel free to copy and distribute it to anyone who might find it useful.

GREGORY E. MAGGS

WASHINGTON, D.C.

LINKS TO ALL EDITIONS OF THE MANUAL FOR COURTS-MARTIAL

Researchers can find amended and prior versions of the Rules for Courts-Martial (R.C.M.) in the current and former editions of the Manual for Courts-Martial (M.C.M.). These editions are now available online in .pdf format at the links provided below. The following pages of this publication identify the edition to consult for each version of an amended R.C.M.

A few points about historic editions of the M.C.M. deserve mention. In 1984, the Joint Service Committee published the first edition of the M.C.M. that contained the R.C.M. The publication consisted of a three-ring binder with loose-leaf sheets. Later in 1984, and then again in 1986, 1987, 1990, and 1991, the Joint Service Committee published five supplements called "Change No. 1," "Change No. 2," and so forth. These supplements contained loose-leaf sheets that users could add to the three-ring binders. Starting in 1994, the Joint Service Committee stopped using the three-ring binder and started publishing each new edition of the M.C.M. as a separate paperback volume. Please note that a supplement published in 2012 contains only a revised version of the Military Rules of Evidence, and that the 2023 edition omits most of the appendices usually included in each M.C.M.

M.C.M. Edition:	**Link:**
Manual for Courts-Martial, United States (2024 Edition) [*hereinafter* M.C.M. (2024 ed.).]	https://jsc.defense.gov/Portals/99/2024%20MCM%20files/MCM%20(2024%20ed)%20(2024_01_02).pdf?ver=6Sk4QFffDE45HeNjOd7KpQ%3d%3d
Manual for Courts-Martial, United States (2023 Edition) [*hereinafter* M.C.M. (2023 ed.).]	https://jsc.defense.gov/Portals/99/Documents/MCM%20editions/2023%20MCM%20(2023_08_30).pdf
Manual for Courts-Martial, United States (2019 Edition) [*hereinafter* M.C.M. (2019 ed.).]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM-2019/MCM-2019.pdf
Manual for Courts-Martial, United States (2016 Edition) [*hereinafter* M.C.M. (2016 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM-2016/MCM-2016.pdf
Supplement to Manual for Courts-Martial, United States, Military Rules of Evidence (2012 Edition)	https://jsc.defense.gov/Portals/99/Documents/MCMSupplement.pdf?ver=2015-03-17-114352-930
Manual for Courts-Martial, United States (2012 Edition) [*hereinafter* M.C.M. (2012 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM-2012/MCM-2012.pdf
Manual for Courts-Martial, United States (2008 Edition) [*hereinafter* M.C.M. (2008 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM-2008/MCM-2008.pdf

Links to Historical Editions of the Manual for Courts-Martial

M.C.M. Edition:	**Link:**
Manual for Courts-Martial, United States (2005 Edition) [*hereinafter* M.C.M. (2005 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-2005/manual-2005.pdf
Manual for Courts-Martial, United States (2002 Edition) [*hereinafter* M.C.M. (2002 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-2002/manual-2002.pdf
Manual for Courts-Martial, United States (2000 Edition) [*hereinafter* M.C.M. (2000 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-2000/manual-2000.pdf
Manual for Courts-Martial, United States (1998 Edition) [*hereinafter* M.C.M. (1998 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-1998/manual-1998.pdf
Manual for Courts-Martial, United States (1995 Edition) [*hereinafter* M.C.M. (1995 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-1995/manual-1995.pdf
Manual for Courts-Martial, United States, 1984 (1994 Edition) [*hereinafter* M.C.M. 1984 (1994 ed.)]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-1994/manual-1994.pdf
Change No. 5, Manual for Courts-Martial, United States, 1984 (Nov. 15, 1991) [*hereinafter* M.C.M. 1984 (Change No. 5 1991)]	http://maggs.us/MCM/MCM-1984-Change-5-1991.pdf
Change No. 4, Manual for Courts-Martial, United States, 1984 (Nov. 15, 1990) [*hereinafter* M.C.M. 1984 (Change No. 4 1990)]	http://maggs.us/MCM/MCM-1984-Change-4-1990.pdf
Change No. 3, Manual for Courts-Martial, United States, 1984 (Jun. 1, 1987) [*hereinafter* M.C.M. 1984 (Change No. 3 1987)]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM_1984-change3/MCM_1984-change3.pdf
Change No. 2, Manual for Courts-Martial, United States, 1984 (May 15, 1986) [*hereinafter* M.C.M. 1984 (Change No. 2 1986)]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM_1984-change2/MCM_1984-change2.pdf
Change No. 1, Manual for Courts-Martial, United States, 1984 (Nov. 15, 1984) [*hereinafter* M.C.M. 1984 (Change No. 1 1984)]	https://tile.loc.gov/storage-services/service/ll/llmlp/MCM_1984-change1/MCM_1984-change1.pdf
Manual for Courts-Martial, United States, 1984 [*hereinafter* M.C.M. 1984]	https://tile.loc.gov/storage-services/service/ll/llmlp/manual-1984/manual-1984.pdf

LINKS TO EXECUTIVE ORDERS AMENDING THE RULES FOR COURTS-MARTIAL

The President of the United States from time to time amends the Rules for Courts-Martial (R.C.M), Military Rules of Evidence (M.R.E.), and other parts of the Manual for Courts-Martial, United States (M.C.M.) by issuing executive orders. The following table lists all of the executive orders that the President has issued, the rules that they have amended, and the edition of the M.C.M. in which the amended version of the rules were first published. (The table above provides links to each version of the M.C.M.)

Executive Order:	**Rules Amended:**	**First Publication:**
Exec. Order No. 14,130, 89 Fed. Reg. 105343 (Dec. 20, 2024), https://www.govinfo.gov/content/pkg/FR-2024-12-27/pdf/2024-31354.pdf	R.C.M. 104, 305, 309, 405, 503, 703, 803, 906, 908, 1002, 1112, 1114, 1118, 1201, 1205, 1209, 1301, 1302, 1304	Not yet included in any M.C.M.
Exec. Order No. 14,103, 88 Fed. Reg. 50535 (Aug. 2, 2023), https://www.govinfo.gov/content/pkg/FR-2023-08-02/pdf/2023-16570.pdf	R.C.M. 103, 104, 105, 201, 301, 302, 303, 303A, 305, 306, 306A, 307, 308, 309, 401, 401A, 402, 403, 404, 404A, 405, 406, 406A, 407, 502, 503, 504, 505, 601, 603, 604, 701, 702, 703, 704, 705, 706, 707, 804, 804, 805, 810, 813, 902, 902A, 905, 906, 908, 909, 910, 911, 912, 912A, 912B, 914, 914A, 914B, 916, 918, 920, 924, 925, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1101, 1102, 1104, 1106, 1106A, 1107, 1109, 1111, 1112, 1113, 1115, 1116, 1117, 1201, 1202, 1203, 1204, 1208, 1210, 1301, 1302, 1304, 1306	The amendments made in Annex I of the Exec. Order No. 14,103 were first published in M.C.M. (2023 ed.). The other amendments were first published in M.C.M. (2024 ed.).
Exec. Order No. 14,062, 87 Fed. Reg. 4763 (Jan. 26, 2022), https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2022-02027.pdf	R.C.M. 916	M.C.M. (2023 ed.)

Executive Order:	**Rules Amended:**	**First Publication:**
Exec. Order No. 13,825, 83 Fed. Reg. 9889 (Mar. 1, 2018), https://www.govinfo.gov/content/pkg/FR-2018-03-08/pdf/2018-04860.pdf	R.C.M. 103, 104, 109, 201, 204, 302, 305, 306, 307, 309, 403, 404, 404A, 405, 406, 406A, 407, 501, 502, 503, 504, 505, 506, 601, 602, 603, 701, 702, 703, 703A, 704, 705, 707, 801, 802, 803, 804, 805, 806, 808, 809, 810, 813, 901, 902, 902A, 903, 905, 906, 907, 908, 910, 912, 912A, 912B, 916, 917, 918, 919, 920, 921, 922, 924, 1001, 1001A, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1101, 1102, 1102A, 1103, 1103A, 1104, 1105, 1105A, 1106, 1106A, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1201, 1202, 1203, 1204, 1205, 1208, 1209, 1210, 1301, 1304, 1305, 1306, 1307	M.C.M. (2019 ed.)
Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016), https://jsc.defense.gov/Portals/99/Documents/EO13740.pdf	R.C.M. 201, 307, 701, 703, 906, 907, 916, 920, 1003, 1004	M.C.M. (2016 ed.)
Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016), https://jsc.defense.gov/Portals/99/Documents/EO13730.pdf	R.C.M. 104, 305, 306, 403, 407, 502, 506, 601, 705, 806, 905, 907, 912, 1002, 1103, 1107, 1108, 1109, 1203	M.C.M. (2016 ed.)
Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015), https://jsc.defense.gov/Portals/99/Documents/EO13696.pdf	R.C.M. 201, 305, 404, 404A, 405, 406, 601, 603, 702, 703, 705, 706, 801, 806, 902, 905, 906, 912, 1001, 1001A, 1103A, 1105, 1106, 1107, 1108, 1112, 1301	M.C.M. (2016 ed.)
Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014), https://jsc.defense.gov/Portals/99/Documents/EO13669.pdf	R.C.M. 405, 703, 1103, 1104, 1105A, 1106, 1107, 1306	M.C.M. (2016 ed.)
Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May. 15, 2013), https://jsc.defense.gov/Portals/99/Documents/EO13643.pdf	None. This executive order amended only Military Rules of Evidence.	N/A

Executive Order:	**Rules Amended:**	**First Publication:**
Exec. Order No. 13,593, 76 Fed. Reg. 78,451 (Dec. 13, 2011), https://jsc.defense.gov/Portals/99/Documents/EO13593.pdf	None. This executive order amended only Military Rules of Evidence.	N/A
Exec. Order No. 54,263, 75 Fed. Reg. 54,263 (Aug. 31, 2010), https://jsc.defense.gov/Portals/99/Documents/EO54263.pdf	R.C.M. 1003, 1106, 1113	M.C.M. (2012 ed.)
Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008), https://jsc.defense.gov/Portals/99/Documents/EO13468.pdf	R.C.M. 103, 405, 1103, 1104, 1106, 1111, 1113, 1114, 1305, 1306	M.C.M. (2012 ed.)
Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sep. 28, 2007), https://jsc.defense.gov/Portals/99/Documents/EO13447.pdf	R.C.M. 916, 920, 1004, 1102, 1204	M.C.M. (2008 ed.)
Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007), https://jsc.defense.gov/Portals/99/Documents/EO13430.pdf	R.C.M. 703, 804, 805, 914A, 914B, 1001	M.C.M. (2008 ed.)
Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005), https://jsc.defense.gov/Portals/99/Documents/EO13387.pdf	R.C.M. 103, 201, 307, 501, 503, 504, 805, 912, 1003, 1004, 1103A, 1301	M.C.M. (2008 ed.)
Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004), https://jsc.defense.gov/Portals/99/Documents/EO13365.pdf	R.C.M. 307, 707, 806, 916, 1103, 1107, 1108, 1305, 1306	M.C.M. (2005 ed.)
Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002), https://jsc.defense.gov/Portals/99/Documents/EO13262.pdf	R.C.M. 201, 701, 806, 1001, 1003, 1004, 1006, 1009, 1103, 1104, 1106, 1107, 1110, 1111, 1112, 1305	M.C.M. (2002 ed.)
Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 6, 1999), https://jsc.defense.gov/Portals/99/Documents/EO13140.pdf	R.C.M. 502, 804, 914A, 1001, 1003, 1004	M.C.M. (2000 ed.)

Executive Order:	**Rules Amended:**	**First Publication:**
Exec. Order No. 13,086, 63 Fed. Reg. 30,065 (May 27, 1998), https://jsc.defense.gov/Portals/99/Documents/EO13086.pdf	R.C.M. 305, 405, 706, 707, 809, 908, 909, 916, 920, 1005, 1101, 1102A, 1105, 1107, 1109, 1201, 1203, 1210	M.C.M. (1998 ed.)
Exec. Order No. 12,960, 60 Fed. Reg. 26,647 (May 12, 1995), https://jsc.defense.gov/Portals/99/Documents/EO12960.pdf	R.C.M. 810, 924, 1003, 1009, 1103, 1104, 1106, 1107, 1108, 1113, 1201, 1305	M.C.M. (1995 ed.)
Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994), https://jsc.defense.gov/Portals/99/Documents/EO12936.pdf	R.C.M. 405, 905, 917, 1001, 1003, 1004, 1102, 1105, 1106	M.C.M. (1995 ed.)
Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993), https://jsc.defense.gov/Portals/99/Documents/EO12888.pdf	R.C.M. 109, 305, 405, 701, 704, 910, 918, 920, 1103	M.C.M. 1984 (1994 ed.)
Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (Jun. 27, 1991), https://jsc.defense.gov/Portals/99/Documents/EO12767.pdf	R.C.M. 405, 701, 705, 707, 802, 908, 1004, 1010, 1103, 1107, 1110, 1113	M.C.M. 1984 (Change No. 5 1991)
Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990), https://jsc.defense.gov/Portals/99/Documents/EO12708.pdf	R.C.M. 302, 905, 913, 1003, 1103, 1106, 1107, 1108, 1112, 1114, 1201	M.C.M. 1984 (Change No. 4 1990)
Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987), https://jsc.defense.gov/Portals/99/Documents/EO12586.pdf	R.C.M. 201, 204, 503, 701, 706, 707, 903, 916, 918, 920, 921 , 924, 1001, 1003, 1010, 1105, 1106, 1107, 1109, 1112, 1113, 1114, 1201, 1203, 1305	M.C.M. 1984 (Change No. 3 1987)
Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 19, 1986), https://jsc.defense.gov/Portals/99/Documents/EO12550.pdf	R.C.M. 707, 805, 903, 909, 916, 920, 921, 922, 1001, 103, 1004, 1010, 1106, 1114	M.C.M. 1984 (Change No. 2 1986)
Exec. Order No. 12,484, 49 Fed. Reg. 28,825 (Jul. 13, 1984), https://jsc.defense.gov/Portals/99/Documents/EO12484.pdf	R.C.M. 305, 502, 506, 703, 901, 1003, 1107, 1108, 1110, 1112, 1113, 1201, 1209	M.C.M. 1984 (Change No. 1 1984)

Executive Order:	**Rules Amended:**	**First Publication:**
Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984), https://jsc.defense.gov/Portals/99/EO%2012473_1.pdf	This executive order created the initial version of R.C.M.	M.C.M. 1984

EXPLANATORY NOTES

This document contains an entry for every current or former Rule for Courts-Martial (R.C.M.). Each entry begins with a heading that presents the number and title of the R.C.M. If amendments have changed the number or title of an R.C.M., the entry uses the most recent number and title. If amendments have deleted the R.C.M., the number and title appear in brackets and the deletion is noted.

After providing the number and title of the R.C.M., the entry first provides information about the promulgation of the original version of the R.C.M. The President promulgated the original version of most R.C.M. in 1984. Accordingly, most entries begin by stating: "The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984."

For rules that the President has amended (i.e., for most rules), the entry then separately describes each amendment by date, with the date being the date of the President's executive order rather than the effective date of the amendment. The description describes the source of the amendment, which is the executive order that created the amendment. It also identifies an edition of the M.C.M. that includes the text of amended rule prior to any subsequent changes. The description next explains then addresses the effective date of the amendment. Finally, the description provides the text or a summary of the amendment. A summary is used when the executive order replaced the rule without specifying the changes to the rule (which was true for most of the changes made by Executive Order No. 13,825, 83 Fed. Reg. 9889 (Mar. 1, 2018).

COMPLETE TABLE OF CONTENTS

PREFACE **1**
LINKS TO EXECUTIVE ORDERS AMENDING THE RULES FOR COURTS-MARTIAL **1**
EXPLANATORY NOTES **1**
PREFACE **2**
LINKS TO ALL EDITIONS OF THE MANUAL FOR COURTS-MARTIAL **3**
LINKS TO EXECUTIVE ORDERS AMENDING THE RULES FOR COURTS-MARTIAL **5**
EXPLANATORY NOTES **10**
COMPLETE TABLE OF CONTENTS **11**
RULE 101. SCOPE, TITLE **31**
RULE 102. PURPOSE AND CONSTRUCTION **31**
RULE 103. DEFINITIONS AND RULES OF CONSTRUCTION **31**
Amendment of October 14, 2005 31
Amendment of July 24, 2008 31
Amendment of March 1, 2018 32
Amendment of July 28, 2023 33
RULE 104. UNLAWFUL COMMAND INFLUENCE **36**
Amendment of May 20, 2016 36
Amendment of March 1, 2018 37
Amendment of July 28, 2023 (Annex 1) 37
Amendment of July 28, 2023 (Annex 2) 39
Amendment of December 20, 2024 41
RULE 105. DIRECT COMMUNICATION: CONVENING AUTHORITIES AND STAFF JUDGE ADVOCATES; AMONG STAFF JUDGE ADVOCATES **42**
Amendment of July 28, 2023 42
RULE 106. DELIVERY OF MILITARY OFFENDERS TO CIVILIAN AUTHORITIES **43**
RULE 107. DISMISSED OFFICER'S RIGHT TO REQUEST TRIAL BY COURT-MARTIAL **43**
RULE 108. RULES OF COURT **43**
RULE 109. PROFESSIONAL SUPERVISION OF MILITARY JUDGES AND COUNSEL **43**
Amendment of December 23, 1993 43
Amendment of March 1, 2018 46
RULE 201. JURISDICTION IN GENERAL **46**
Amendment of March 3, 1987 47
Amendment of April 11, 2002 48

Amendment of October 14, 2005 49
Amendment of June 17, 2015 49
Amendment of September 16, 2016 50
Amendment of March 1, 2018 50
Amendment of July 28, 2023 (Annex 1) 51
Amendment of July 28, 2023 (Annex 2) 53
RULE 202. PERSONS SUBJECT TO JURISDICTION OF COURTS-MARTIAL 54
RULE 203. JURISDICTION OVER THE OFFENSE 54
RULE 204. JURISDICTION OVER CERTAIN RESERVE COMPONENT PERSONNEL 54
Amendment of March 3, 1987 54
Amendment of March 1, 2018 55
RULE 301. REPORT OF OFFENSE 56
Amendment of July 28, 2023 56
RULE 302. APPREHENSION 57
Amendment of March 23, 1990 57
Amendment of March 1, 2018 57
Amendment of July 28, 2023 58
RULE 303. PRELIMINARY INQUIRY INTO REPORTED OFFENSES 58
Amendment of July 28, 2023 58
RULE 303A. PRELIMINARY INQUIRY INTO REPORTED OFFENSES 59
RULE 304. PRETRIAL RESTRAINT 59
RULE 305. PRETRIAL CONFINEMENT 59
Amendment of July 13, 1984 59
Amendment of December 23, 1993 60
Amendment of May 27, 1998 61
Amendment of June 17, 2015 64
Amendment of May 20, 2016 65
Amendment of March 1, 2018 65
Amendment of July 28, 2023 (Annex 1) 66
Amendment of July 28, 2023 (Annex 2) 67
Amendment of December 20, 2024 71
RULE 306. INITIAL DISPOSITION 72
Amendment of May 20, 2016 72

Amendment of March 1, 2018 73
Amendment of July 28, 2023 73
RULE 306A. INITIAL DISPOSITION OF OFFENSES OVER WHICH A SPECIAL COUNSEL EXERCISES AUTHORITY 75
RULE 307. PREFERRAL OF CHARGES 75
Amendment of December 3, 2004 75
Amendment of October 14, 2005 75
Amendment of September 16, 2016 76
Amendment of March 1, 2018 77
Amendment of July 28, 2023 (Annex 1) 77
Amendment of July 28, 2023 (Annex 2) 78
RULE 308. NOTIFICATION TO ACCUSED OF CHARGES 78
Amendment of July 28, 2023 78
RULE 309. PRE-REFERRAL JUDICIAL PROCEEDINGS 80
Amendment of March 1, 2018 80
Amendment of July 28, 2023 (Annex 1) 80
Amendment of July 28, 2023 (Annex 2) 82
Amendment of December 20, 2024 83
RULE 401. FORWARDING AND DISPOSITION OF CHARGES IN GENERAL 84
Amendment of July 28, 2023 84
RULE 401A. DISPOSITION OF CHARGES OVER WHICH A SPECIAL TRIAL COUNSEL EXERCISES AUTHORITY AND HAS NOT DEFERRED 85
RULE 402. ACTION BY COMMANDER NOT AUTHORIZED TO CONVENE COURTS-MARTIAL 85
Amendment of July 28, 2023 85
RULE 403. ACTION BY COMMANDER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION 86
Amendment of May 20, 2016 86
Amendment of March 1, 2018 86
Amendment of July 28, 2023 87
RULE 404. ACTION BY COMMANDER EXERCISING SPECIAL COURT-MARTIAL JURISDICTION ... 87
Amendment of June 17, 2015 88
Amendment of March 1, 2018 88
Amendment of July 28, 2023 88
RULE 404A. DISCLOSURE OF MATTERS FOLLOWING DIRECTION OF PRELIMINARY HEARING .. 89
Amendment of June 17, 2015 89

Amendment of March 1, 2018 90
Amendment of July 28, 2023 91
RULE 405. PRELIMINARY HEARING 91
Amendment of June 27, 1991 91
Amendment of December 23, 1993 92
Amendment of November 10, 1994 93
Amendment of May 27, 1998 93
Amendment of July 24, 2008 94
Amendment of June 13, 2014 95
Amendment of June 17, 2015 96
Amendment of March 1, 2018 96
Amendment of July 28, 2023 (Annex 1) 97
Amendment of July 28, 2023 (Annex 2) 99
Amendment of December 20, 2024 110
RULE 406. PRETRIAL ADVICE 115
Amendment of June 17, 2015 115
Amendment of March 1, 2018 116
Amendment of July 28, 2023 (Annex 1) 116
Amendment of July 28, 2023 (Annex 2) 116
RULE 406A. PRETRIAL ADVICE BEFORE REFERRAL TO SPECIAL COURT-MARTIAL 118
Added of March 1, 2018 118
Amendment of July 28, 2023 118
RULE 407. ACTION BY COMMANDER EXERCISING GENERAL COURT-MARTIAL JURISDICTION 119
Amendment of May 20, 2016 119
Amendment of March 1, 2018 119
Amendment of July 28, 2023 120
RULE 501. COMPOSITION AND PERSONNEL OF COURTS-MARITAL 121
Amendment of October 14, 2005 121
Amendment of March 1, 2018 121
RULE 502. QUALIFICATIONS AND DUTIES OF PERSONNEL OF COURTS-MARTIAL 122
Amendment of July 13, 1984 122
Amendment of October 6, 1999 122
Amendment of March 1, 2018 123

Amendment of July 28, 2023 (Annex 2) 124
Amendment of July 28, 2023 (Annex 3) 124
RULE 503. DETAILING MEMBERS, MILITARY JUDGE, AND COUNSEL, AND DESIGNATING MILITARY MAGISTRATES 125
Amendment of Mar. 3, 1987 125
Amendment of October 14, 2005 126
Amendment of March 1, 2018 126
Amendment of July 28, 2023 127
Amendment of December 20, 2024 128
RULE 504. CONVENING COURTS-MARTIAL 129
Amendment of October 14, 2005 129
Amendment of March 1, 2018 130
Amendment of July 28, 2023 130
RULE 505. CHANGES OF MEMBERS, MILITARY JUDGE, AND COUNSEL 131
Amendment of March 1, 2018 131
Amendment of July 28, 2023 131
RULE 506. ACCUSED'S RIGHTS TO COUNSEL 132
Amendment of July 13, 1984 132
Amendment of May 20, 2016 132
Amendment of March 1, 2018 133
RULE 601. REFERRAL 133
Amendment of June 17, 2015 133
Amendment of May 20, 2016 134
Amendment of March 1, 2018 134
Amendment of July 28, 2023 135
RULE 602. SERVICE OF CHARGES 138
Amendment of March 1, 2018 138
RULE 603. CHANGES TO CHARGES AND SPECIFICATIONS 138
Amendment of June 17, 2015 139
Amendment of March 1, 2018 139
Amendment of July 28, 2023 139
RULE 604. WITHDRAWAL OF CHARGES 140
Amendment of July 28, 2023 140
RULE 701. DISCOVERY 141

Amendment of March 3, 1987 141
Amendment of June 27, 1991 141
Amendment of December 23, 1993 142
Amendment of April 11, 2002 143
Amendment of September 16, 2016 143
Amendment of March 1, 2018 144
Amendment of July 28, 2023 146
RULE 702. DEPOSITIONS 148
Amendment of June 17, 2015 148
Amendment of March 1, 2018 149
Amendment of July 28, 2023 149
RULE 703. PRODUCTION OF WITNESSES AND EVIDENCE 150
Amendment of July 13, 1984 150
Amendment of April 18, 2007 150
Amendment of June 13, 2014 151
Amendment of June 17, 2015 153
Amendment of September 16, 2016 154
Amendment of March 1, 2018 154
Amendment of July 28, 2023 (Annex 1) 155
Amendment of July 28, 2023 (Annex 2) 156
RULE 703A. WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATION 160
Addition on March 1, 2018 160
Amendment of July 28, 2023 (Annex 1) 160
Amendment of July 28, 2023 (Annex 2) 163
Amendment of December 20, 2024 163
RULE 704. IMMUNITY 164
Amendment of December 23, 1993 164
Amendment of March 1, 2018 165
Amendment of July 28, 2023 166
RULE 705. PLEA AGREEMENTS 168
Amendment of June 27, 1991 168
Amendment of June 17, 2015 169
Amendment of May 20, 2016 170

Amendment of March 1, 2018 170
Amendment of July 28, 2023 (Annex 1) 171
Amendment of July 28, 2023 (Annex 2) 171
RULE 706. INQUIRY INTO THE MENTAL CAPACITY OR MENTAL RESPONSIBILITY OF THE ACCUSED 173
Amendment of March 3, 1987 173
Amendment of May 27, 1998 174
Amendment of June 17, 2015 174
Amendment of July 28, 2023 (Annex 1) 175
Amendment of July 28, 2023 (Annex 2) 175
RULE 707. SPEEDY TRIAL 176
Amendment of February 19, 1986 176
Amendment of March 3, 1987 177
Amendment of June 27, 1991 177
Amendment of May 27, 1998 179
Amendment of December 3, 2004 180
Amendment of March 1, 2018 181
Amendment of July 28, 2023 (Annex 1) 181
Amendment of July 28, 2023 (Annex 2) 182
RULE 801. MILITARY JUDGE'S RESPONSIBILITY; OTHER MATTERS 183
Amendment of June 17, 2015 183
Amendment of March 1, 2018 184
RULE 802. CONFERENCES 185
Amendment of June 27, 1991 185
Amendment of March 1, 2018 185
RULE 803. COURT-MARTIAL SESSIONS WITH MEMBERS UNDER ARTICLE 39(A) 186
Amendment of March 1, 2018 186
Amendment of December 20, 2024 187
RULE 804. PRESENCE OF THE ACCUSED AT TRIAL PROCEEDINGS 187
Amendment of October 6, 1999 187
Amendment of April 18, 2007 188
Amendment of March 1, 2018 189
Amendment of July 28, 2023 (Annex 1) 189
Amendment of July 28, 2023 (Annex 2) 190

RULE 805. PRESENCE OF MILITARY JUDGE, MEMBERS, AND COUNSEL 193
Amendment of February 19, 1986 193
Amendment of October 14, 2005 193
Amendment of April 18, 2007 194
Amendment of March 1, 2018 194
Amendment of July 28, 2023 195
RULE 806. PUBLIC TRIAL 195
Amendment of April 11, 2002 196
Amendment of December 3, 2004 196
Amendment of June 17, 2015 197
Amendment of May 20, 2016 197
Amendment of March 1, 2018 198
RULE 807. OATHS 199
RULE 808. RECORD OF TRIAL 199
Amendment of March 1, 2018 199
RULE 809. CONTEMPT PROCEEDINGS 199
Amendment of May 27, 1998 200
Amendment of March 1, 2018 200
RULE 810. PROCEDURES FOR REHEARINGS, NEW TRIALS, OTHER TRIALS, AND REMANDS 201
Amendment of May 12, 1995 201
Amendment of March 1, 2018 202
Amendment of July 28, 2023 203
RULE 811. STIPULATIONS 204
RULE 812. JOINT AND COMMON TRIALS 204
RULE 813. ANNOUNCING PERSONNEL OF THE COURTS-MARTIAL AND THE ACCUSED 204
Amendment of March 1, 2018 204
Amendment of July 28, 2023 205
RULE 901. OPENING SESSION 206
Amendment of July 13, 1984 206
Amendment of March 1, 2018 206
RULE 902. DISQUALIFICATION OF MILITARY JUDGE 207
Amendment of June 17, 2015 207
Amendment of March 1, 2018 207

Amendment of July 28, 2023 208
RULE 902A. APPLICATION OF SENTENCING RULES [DELETED] 208
Amendment of March 1, 2018 208
Amendment of July 28, 2023 209
RULE 903. ACCUSED'S ELECTIONS ON COMPOSITION OF COURT-MARTIAL 209
Amendment of February 19, 1986 209
Amendment of March 3, 1987 210
Amendment of March 1, 2018 210
RULE 904. ARRAIGNMENT 211
RULE 905. MOTIONS GENERALLY 211
Amendment of March 23, 1990 211
Amendment of November 10, 1994 212
Amendment of June 17, 2015 212
Amendment of May 20, 2016 213
Amendment of March 1, 2018 213
Amendment of July 28, 2023 214
RULE 906. MOTIONS FOR APPROPRIATE RELIEF 214
Amendment of June 17, 2015 214
Amendment of September 16, 2016 215
Amendment of March 1, 2018 215
Amendment of July 28, 2023 (Annex 2) 216
Amendment of July 28, 2023 (Annex 3) 217
Amendment of December 20, 2024 217
RULE 907. MOTIONS TO DISMISS 218
Amendment of May 20, 2016 218
Amendment of September 16, 2016 219
Amendment of March 1, 2018 219
RULE 908. APPEAL BY THE UNITED STATES 220
Amendment of June 27, 1991 220
Amendment of May 27, 1998 221
Amendment of March 1, 2018 221
Amendment of July 28, 2023 222
Amendment of December 20, 2024 223

RULE 909. CAPACITY OF THE ACCUSED TO STAND TRIAL BY COURT-MARTIAL 224
Amendment of February 19, 1986 224
Amendment of May 27, 1998 225
Amendment of July 28, 2023 (Annex 1) 226
Amendment of July 28, 2023 (Annex 2) 227
RULE 910. PLEAS 228
Amendment of December 23, 1993 228
Amendment of March 1, 2018 229
Amendment of July 28, 2023 (Annex 1) 230
Amendment of July 28, 2023 (Annex 2) 231
RULE 911. ASSEMBLY OF THE COURT-MARTIAL 231
Amendment of July 28, 2023 (Annex 2) 231
RULE 912. CHALLENGE OF SELECTION OF MEMBERS; EXAMINATION AND CHALLENGES OF MEMBERS 232
Amendment of October 14, 2005 232
Amendment of June 17, 2015 233
Amendment of May 20, 2016 234
Amendment of March 1, 2018 234
Amendment of July 28, 2023 235
RULE 912A. IMPANELING MEMBERS AND ALTERNATE MEMBERS 236
Amendment of March 1, 2018 236
Amendment of July 28, 2023 (Annex 1) 236
Amendment of July 28, 2023 (Annex 2) 237
RULE 912B. EXCUSAL AND REPLACEMENT OF MEMBERS AFTER IMPANELMENT 240
Amendment of March 1, 2018 240
Amendment of July 28, 2023 (Annex 2) 240
RULE 913. PRESENTATION OF THE CASE ON THE MERITS 241
Amendment of March 23, 1990 241
RULE 914. PRODUCTION OF STATEMENTS OF WITNESSES 242
Amendment of July 28, 2023 (Annex 1) 242
Amendment of July 28, 2023 (Annex 2) 242
RULE 914A. USE OF REMOTE LIVE TESTIMONY OF A CHILD 243
Amendment of October 6, 1999 243
Amendment of April 18, 2007 244

Amendment of July 28, 2023 244
RULE 914B. USE OF REMOTE TESTIMONY 245
Amendment of April 18, 2007 245
Amendment of July 28, 2023 245
RULE 915. MISTRIAL 246
RULE 916. DEFENSES 246
Amendment of February 19, 1986 246
Amendment of March 3, 1987 247
Amendment of May 27, 1998 248
Amendment of December 3, 2004 249
Amendment of September 28, 2007 249
Amendment of September 16, 2016 250
Amendment of March 1, 2018 251
Amendment of January 26, 2022 251
Amendment of July 28, 2023 252
RULE 917. MOTION FOR FINDING OF NOT GUILTY 253
Amendment of November 10, 1994 253
Amendment of March 1, 2018 253
RULE 918. FINDINGS 254
Amendment of March 3, 1987 254
Amendment of December 23, 1993 254
Amendment of March 1, 2018 255
Amendment of July 28, 2023 255
RULE 919. ARGUMENT BY COUNSEL ON FINDINGS 256
Amendment of March 1, 2018 256
RULE 920. INSTRUCTIONS ON FINDINGS 256
Amendment of February 19, 1986 257
Amendment of March 3, 1987 257
Amendment of December 23, 1993 257
Amendment of May 27, 1998 258
Amendment of September 28, 2007 258
Amendment of March 1, 2018 259
Amendment of July 28, 2023 (Annex 1) 260

Amendment of July 28, 2023 (Annex 2) 260
RULE 921. DELIBERATIONS AND VOTING ON FINDINGS 261
Amendment of February 19, 1986 261
Amendment of March 3, 1987 261
Amendment of March 1, 2018 262
RULE 922. ANNOUNCEMENT OF FINDINGS 262
Amendment of February 19, 1986 263
Amendment of March 1, 2018 263
RULE 923. IMPEACHMENT OF FINDINGS 264
RULE 924. RECONSIDERATION OF FINDINGS 264
Amendment of March 3, 1987 264
Amendment of May 12, 1995 264
Amendment of March 1, 2018 265
Amendment of July 28, 2023 265
RULE 925. APPLICATION OF SENTENCING RULES 266
RULE 1001. PRESENTENCING PROCEDURE 266
Amendment of February 19, 1986 266
Amendment of March 3, 1987 267
Amendment of November 10, 1994 267
Amendment of October 6, 1999 268
Amendment of April 11, 2002 269
Amendment of April 18, 2007 269
Amendment of June 17, 2015 270
Amendment of March 1, 2018 270
Amendment of July 28, 2023 271
RULE 1001A. CRIME VICTIMS AND PRESENTENCING [DELETED] 274
Amendment of June 17, 2015 274
Amendment of March 1, 2018 275
RULE 1002. SENTENCING DETERMINATION 276
Amendment of May 20, 2016 276
Amendment of March 1, 2018 276
Amendment of July 28, 2023 277
Amendment of December 20, 2024 279

RULE 1003. PUNISHMENTS 280
Amendment of July 13, 1984 280
Amendment of February 19, 1986 280
Amendment of March 3, 1987 281
Amendment of March 23, 1990 282
Amendment of November 10, 1994 282
Amendment of May 12, 1995 283
Amendment of October 6, 1999 283
Amendment of April 11, 2002 284
Amendment of October 14, 2005 284
Amendment of August 31, 2010 285
Amendment of September 16, 2016 285
Amendment of March 1, 2018 286
Amendment of July 28, 2023 (Annex 1) 286
Amendment of July 28, 2023 (Annex 3) 287
RULE 1004. CAPITAL CASES 288
Amendment of February 19, 1986 289
Amendment of June 27, 1991 290
Amendment of November 10, 1994 291
Amendment of October 6, 1999 291
Amendment of April 11, 2002 292
Amendment of October 14, 2005 292
Amendment of September 28, 2007 293
Amendment of September 16, 2016 294
Amendment of March 1, 2018 295
Amendment of July 28, 2023 296
RULE 1005. INSTRUCTIONS ON SENTENCE 304
Amendment of May 27, 1998 304
Amendment of March 1, 2018 305
Amendment of July 28, 2023 306
RULE 1006. DELIBERATIONS AND VOTING ON SENTENCE [RESERVED] 307
Amendment of April 11, 2002 307
Amendment of March 1, 2018 307

Amendment of July 28, 2023 308
RULE 1007. ANNOUNCEMENT OF SENTENCE 309
Amendment of March 1, 2018 309
Amendment of July 28, 2023 309
RULE 1008. IMPEACHMENT OF SENTENCE 310
Amendment of July 28, 2023 310
RULE 1009. RECONSIDERATION OF SENTENCE [RESERVED] 310
Amendment of May 12, 1995 311
Amendment of April 11, 2002 312
Amendment of March 1, 2018 313
Amendment of July 28, 2023 313
RULE 1010. NOTICE CONCERNING POST-TRIAL AND APPELLATE RIGHTS 314
Amendment of February 19, 1986 314
Amendment of March 3, 1987 314
Amendment of June 27, 1991 315
Amendment of March 1, 2018 315
RULE 1011. ADJOURNMENT 316
RULE 1101. STATEMENT OF TRIAL RESULTS 316
Amendment of May 27, 1998 316
Amendment of March 1, 2018 319
Amendment of July 28, 2023 319
RULE 1102. EXECUTION AND EFFECTIVE DATE OF SENTENCES 320
Amendment of November 10, 1994 320
Amendment of September 28, 2007 320
Amendment of March 1, 2018 321
Amendment of July 28, 2023 322
RULE 1102A POST-TRIAL HEARING FOR PERSON FOUND NOT-GUILTY ONLY BY REASON OF LACK OF MENTAL RESPONSIBILITY [DELETED] 323
Amendment of May 27, 1998 323
Amendment of March 1, 2018 324
RULE 1103. DEFERMENT OF CONFINEMENT, FORFEITURES, AND REDUCTION IN GRADE; WAIVER OF ARTICLE 58B FORFEITURES 324
Amendment of March 23, 1990 325
Amendment of June 27, 1991 325

Amendment of December 23, 1993 326
Amendment of May 12, 1995 326
Amendment of April 11, 2002 327
Amendment of December 3, 2004 328
Amendment of July 24, 2008 328
Amendment of June 13, 2014 329
Amendment of May 20, 2016 330
Amendment of March 1, 2018 331
RULE 1103A. SEALED EXHIBITS AND PROCEEDINGS [DELETED] 332
Amendment of October 14, 2005 332
Amendment of June 17, 2015 334
Amendment of March 1, 2018 335
RULE 1104. POST-TRIAL MOTIONS AND PROCEEDINGS 338
Amendment of April 11, 2002 338
Amendment of July 24, 2008 339
Amendment of June 13, 2014 340
Amendment of March 1, 2018 340
Amendment of July 28, 2023 341
RULE 1105. POST-TRIAL HEARING FOR PERSON FOUND NOT GUILTY ONLY BY REASON OF LACK OF MENTAL RESPONSIBILITY 341
Amendment of March 3, 1987 341
Amendment of November 10, 1994 342
Amendment of May 27, 1998 343
Amendment of June 17, 2015 344
Amendment of March 1, 2018 344
RULE 1105A MATTERS SUBMITTED BY A CRIME VICTIM [DELETED] 345
June 13, 2014 345
Amendment of June 17, 2015 346
Amendment of March 1, 2018 347
RULE 1106. MATTERS SUBMITTED BY ACCUSED 347
Amendment of February 19, 1986 347
Amendment of March 3, 1987 348
Amendment of March 23, 1990 348
Amendment of November 10, 1994 349

Amendment of May 12, 1995 350
Amendment of April 11, 2002 350
Amendment of July 24, 2008 351
Amendment of August 31, 2010 351
Amendment of June 13, 2014 352
Amendment of June 17, 2015 354
Amendment of March 1, 2018 354
Amendment of July 28, 2023 354
RULE 1106A. MATTERS SUBMITTED BY CRIME VICTIM 355
Amendment of March 1, 2018 355
Amendment of July 28, 2023 355
RULE 1107. SUSPENSION OF EXECUTION OF SENTENCE; REMISSION 356
Amendment of July 13, 1984 356
Amendment of March 3, 1987 356
Amendment of March 23, 1990 357
Amendment of June 27, 1991 357
Amendment of May 12, 1995 358
Amendment of May 27, 1998 359
Amendment of April 11, 2002 360
Amendment of December 3, 2004 360
Amendment of June 13, 2014 361
Amendment of June 17, 2015 361
Amendment of May 20, 2016 365
Amendment of March 1, 2018 368
Amendment of July 28, 2023 369
RULE 1108. VACATION OF SUSPENSION OF SENTENCE 369
Amendment of July 13, 1984 369
Amendment of March 23, 1990 370
Amendment of May 12, 1995 370
Amendment of December 3, 2004 371
Amendment of June 17, 2015 371
Amendment of May 20, 2016 372
Amendment of March 1, 2018 373

RULE 1109. REDUCTION OF SENTENCE, GENERAL AND SPECIAL COURTS-MARTIAL 373
Amendment of March 3, 1987 373
Amendment of May 27, 1998 374
Amendment of April 11, 2002 378
Amendment of September 16, 2016 379
Amendment of March 1, 2018 382
Amendment of July 28, 2023 383
RULE 1110. ACTION BY CONVENING AUTHORITY IN CERTAIN GENERAL AND SPECIAL COURTS-MARTIAL 385
Amendment of July 13, 1984 385
Amendment of June 27, 1991 385
Amendment of April 11, 2002 386
Amendment of March 1, 2018 386
RULE 1111. ENTRY OF JUDGMENT 387
Amendment of April 11, 2002 387
Amendment of July 24, 2008 387
Amendment of March 1, 2018 388
Amendment of July 28, 2023 388
RULE 1112. CERTIFICATION OF RECORD OF TRIAL; GENERAL AND SPECIAL COURTS-MARTIAL 389
Amendment of July 13, 1984 389
Amendment of March 3, 1987 389
Amendment of March 23, 1990 390
Amendment of April 11, 2002 390
Amendment of June 17, 2015 391
Amendment of March 1, 2018 391
Amendment of July 28, 2023 (Annex 1) 392
Amendment of July 28, 2023 (Annex 3) 392
Amendment of December 20, 2024 393
RULE 1113. SEALED EXHIBITS, PROCEEDINGS, AND OTHER MATERIALS 393
Amendment of July 13, 1984 394
Amendment of March 3, 1987 394
Amendment of June 27, 1991 395
Amendment of May 12, 1995 395

Amendment of July 24, 2008 396
Amendment of August 31, 2010 397
Amendment of March 1, 2018 397
Amendment of July 28, 2023 (Annex 1) 398
Amendment of July 28, 2023 (Annex 2) 398
RULE 1114. TRANSCRIPTION OF PROCEEDINGS 399
Amendment of February 19, 1986 399
Amendment of March 3, 1987 400
Amendment of March 23, 1990 400
Amendment of July 24, 2008 401
Amendment of March 1, 2018 401
Amendment of December 20, 2024 402
RULE 1115. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW 402
Amendment of March 1, 2018 402
Amendment of July 28, 2023 403
RULE 1116. TRANSMITTAL OF RECORDS OF TRIAL FOR GENERAL AND SPECIAL COURTS-MARTIAL 403
Amendment of March 1, 2018 403
Amendment of July 28, 2023 404
RULE 1117. APPEAL OF SENTENCE BY THE UNITED STATES 404
Amendment of March 1, 2018 404
Amendment of July 28, 2023 405
RULE 1118. REVIEW BY THE JUDGE ADVOCATE GENERAL 407
RULE 1201. REVIEW BY THE JUDGE ADVOCATE GENERAL 407
Amendment of July 13, 1984 407
Amendment of March 3, 1987 407
Amendment of March 23, 1990 408
Amendment of May 12, 1995 408
Amendment of May 27, 1998 409
Amendment of March 1, 2018 409
Amendment of July 28, 2023 410
Amendment of December 20, 2024 411
RULE 1202. APPELLATE COUNSEL 411
Amendment of March 1, 2018 411

Amendment of July 28, 2023 (Annex 1) 412
Amendment of July 28, 2023 (Annex 2) 412
RULE 1203. REVIEW BY A COURT OF CRIMINAL APPEALS 413
Amendment of March 3, 1987 413
Amendment of May 27, 1998 414
Amendment of May 20, 2016 414
Amendment of March 1, 2018 415
Amendment of July 28, 2023 415
RULE 1204. REVIEW BY THE COURT OF APPEALS FOR THE ARMED FORCES 417
Amendment of September 28, 2007 417
Amendment of March 1, 2018 418
Amendment of July 28, 2023 418
RULE 1205. REVIEW BY THE SUPREME COURT 420
Amendment of March 1, 2018 420
Amendment of December 20, 2024 420
RULE 1206. POWERS AND RESPONSIBILITIES OF THE SECRETARY 421
RULE 1207. SENTENCES REQUIRING APPROVAL BY THE PRESIDENT 421
RULE 1208. RESTORATION 421
Amendment of March 1, 2018 421
Amendment of July 28, 2023 422
RULE 1209. FINALITY OF COURTS-MARTIAL 422
Amendment of July 13, 1984 422
Amendment of March 1, 2018 423
Amendment of December 20, 2024 423
RULE 1210. NEW TRIAL 424
Amendment of May 27, 1998 424
Amendment of March 1, 2018 424
Amendment of July 28, 2023 425
RULE 1301. SUMMARY COURTS-MARTIAL 425
Amendment of October 14, 2005 425
Amendment of June 17, 2015 426
Amendment of March 1, 2018 426
Amendment of July 28, 2023 427

Amendment of December 20, 2024 428
RULE 1302. CONVENING A SUMMARY COURT-MARTIAL 429
Amendment of July 28, 2023 429
Amendment of December 20, 2024 429
RULE 1303. RIGHT TO OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL 430
RULE 1304. TRIAL PROCEDURE 430
Amendment of March 1, 2018 430
Amendment of July 28, 2023 431
Amendment of December 20, 2024 432
RULE 1305. RECORD OF TRIAL 433
Amendment of March 3, 1987 433
Amendment of May 12, 1995 433
Amendment of April 11, 2002 434
Amendment of December 3, 2004 434
Amendment of July 24, 2008 434
Amendment of March 1, 2018 435
RULE 1306. POST-TRIAL PROCEDURE, SUMMARY COURT-MARTIAL 436
Amendment of December 3, 2004 436
Amendment July 24, 2008 436
Amendment of June 13, 2014 437
Amendment of March 1, 2018 437
Amendment of July 28, 2023 438
RULE 1307. REVIEW OF SUMMARY COURTS-MARTIAL BY A JUDGE ADVOCATE 438
Amendment of March 1, 2018 438

Rule 101. Scope, title

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 102. Purpose and construction

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 103. Definitions and rules of construction

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(a), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> (a) R.C.M. 103(2) is amended by replacing the word "without" with the word "with" and by replacing the word "noncapital" with the word "capital".

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex § 1(a), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 103 is amended by adding the following new subparagraph (20) and re-designating the current subparagraph (20) as subparagraph (21):

"(20) "Writing" includes printing and typewriting and reproductions of visual symbols by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 103(1), (2), and (3) are renumbered as R.C.M. 103(2), (3), and (4); R.C.M. 103(16) through (18) are renumbered as R.C.M. 103(17) through (19); R.C.M. 103(19) through (21) are renumbered R.C.M. 103(21) through (23). The definition of "UCMJ" is moved from R.C.M. 103(4) to R.C.M. 103(20).

R.C.M. 103(1) is amended and clarifies the reference to "appellate military judge" means a judge of a Court of Criminal Appeals.

R.C.M. 103(8)(D) is amended and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes a convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

R.C.M. 103(11) is amended and updates a description of the federal law definition of "explosive."

R.C.M. 103(15) is amended and implements Article 1, as amended by Section 5101 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 1081(a)(21) and 1081(c)(1)(A) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which amends the definition of "military judge."

R.C.M. 103(16) is amended and implements Articles 19, 26a, and 30a, as amended by Sections 5163, 5185, and 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which authorizes the use of military magistrates; Article 30a was amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 103(17) is amended and clarifies the definition of "party" to include acting on behalf of a party in pre-referral and post-referral proceedings under these rules.

R.C.M. 103(22) is amended and aligns the definitions of "writings" and "recordings" with Mil. R. Evid. 1001.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(a), 88 Fed. Reg. 50598 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(a) R.C.M. 103 is amended to read as follows:

"Rule 103. Definitions and rules of construction

The following definitions and rules of construction apply throughout this Manual, unless otherwise expressly provided.

(1) "Appellate military judge" means a judge of a Court of Criminal Appeals.

(2) "Article" refers to articles of the Uniform Code of Military Justice unless the context indicates otherwise.

(3) "Capital case" means a general court-martial to which a capital offense has been referred with an instruction that the case be treated as a capital proceeding, and, in the case of a rehearing or new or other trial, for which offense death remains an authorized punishment under R.C.M. 810(d).

(4) "Capital offense" means an offense for which death is an authorized punishment under the UCMJ and Part IV of this Manual or under the law of war.

(5) "Commander" means a commissioned officer in command or an officer in charge except in Part V or unless the context indicates otherwise.

(6) "Convening authority" includes a commissioned officer in command for the time being and successors in command.

(7) "Copy" means an accurate reproduction, however made. Whenever necessary and feasible, a copy may be made by handwriting.

(8) "Court-martial" includes, depending on the context:

(A) The military judge and members of a general or special court-martial;

(B) The military judge when a session of a general or special court-martial is conducted without members under Article 39(a);

(C) The military judge when a request for trial by military judge alone has been approved under R.C.M. 903;

(D) The military judge when the case is referred as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A); or

(E) The summary court-martial officer.

(9) "Days." When a period of time is expressed in a number of days, the period shall be in calendar days, unless otherwise specified. Unless otherwise specified, the date on which the period begins shall not count, but the date on which the period ends shall count as one day.

(10) "Deferral" of an offense means a special trial counsel declines to prefer charges for an offense or declines to refer charges to court-martial. Once a special trial counsel declines to prefer or refer charges for an offense, a commander shall exercise authority within the scope of these rules.

(11) "Detail" means to order a person to perform a specific temporary duty, unless the context indicates otherwise.

(12) "Exercise authority over" means when a special trial counsel acts on a covered, related, or known offense in furtherance of a special trial counsel's statutory duties or authorities under Article 24a(c).

(13) "Explosive" means gunpowders; powders used for blasting; all forms of high explosives; blasting materials; fuzes (other than electrical circuit breakers), detonators, and other detonating agents; smokeless powders; any explosive bomb, grenade, missile, or similar device; any incendiary bomb or grenade, fire bomb, or similar device; and any other compound, mixture, or device which is an explosive within the meaning of 18 U.S.C. § 232(5) or 844(i).

(14) "Firearm" means any weapon that is designed to or may be readily converted to expel any projectile by the action of an explosive.

(15) "Joint" in connection with military organization connotes activities, operations, organizations, and the like in which elements of more than one military service of the same nation participate.

(16) "Lead Special Trial Counsel" within the Department of Defense means a general or flag officer with significant experience in military justice who is responsible for a dedicated

office within each Military Department from which office the Lead Special Trial Counsel will provide for the overall supervision and oversight of the activities of the special trial counsel of a Military Department or Military Service, and who reports directly to the Secretary concerned, without intervening authority.

(17) "Members." The members of a court-martial are the voting members detailed by the convening authority.

(18) "Military judge" means a judge advocate designated under Article 26(c) who is detailed under Article 26(a) or Article 30a to preside over a general or special court-martial or proceeding before referral. In the context of a summary court-martial, "military judge" means the summary court-martial officer. In the context of a pre-referral proceeding or a special court-martial consisting of a military judge alone, "military judge" includes a military magistrate designated under Article 19 or Article 30a.

(19) "Military magistrate" means a commissioned officer of the armed forces certified under Article 26a who is performing duties under Article 19 or 30a.

(20) "Party," in the context of parties to a court-martial or other proceeding under these rules, means:

(A) The accused and any defense or associate or assistant defense counsel and agents of the defense counsel when acting on behalf of the accused with respect to the court-martial or proceeding in question; and

(B) Any trial or assistant trial counsel representing the United States, and agents of the trial counsel or such counsel when acting on behalf of the United States with respect to the court-martial or proceeding in question.

(21) "Preferral" is the act by which a person subject to the UCMJ formally accuses another person subject to the UCMJ of an offense, in accordance with R.C.M. 307(b).

(22) "Referral" is the order of a convening authority or a special trial counsel that one or more charges and specifications against an accused will be tried by a specified court-martial.

(23) "Referral authority" means a convening authority or special trial counsel who may order that one or more charges and specifications against an accused be tried by a specified court-martial pursuant to R.C.M. 601.

(24) "Special trial counsel" means a judge advocate who is qualified, certified, and assigned as such by the Judge Advocate General of the armed force of which the officer is a member, or, in the case of the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps, and who is independent of the military chains of command of both the victim and those accused of covered offenses over which a special trial counsel at any time exercises authority in accordance with Article 24a. Special trial counsel shall be well-trained, experienced, highly skilled and competent in handling cases involving covered offenses. Within the Department of Defense, special trial counsel work within dedicated offices under the overall supervision and oversight of a Lead Special Trial Counsel. Within the Coast Guard, special trial counsel work under the overall supervision and oversight of an officer designated under regulations prescribed by the Commandant of the Coast Guard.

(25) "Staff judge advocate" means a judge advocate so designated in the Army, Air Force, or Marine Corps, and means the principal legal advisor of a command in the Navy and Coast Guard who is a judge advocate.

(26) "*Sua sponte*" means that the person involved acts on that person's initiative, without the need for a request, motion, or application.

(27) "Trial counsel," unless otherwise specified in these rules, includes special trial counsel.

(28) "UCMJ" refers to the Uniform Code of Military Justice.

(29) "War, time of." For purposes of R.C.M. 1004(c)(6) and of implementing the applicable paragraphs of Parts IV and V of this Manual only, "time of war" means a period of war declared by Congress, or the factual determination by the President that the existence of hostilities warrants a finding that a "time of war" exists for purposes ofR.C.M. 1004(c)(6) and Parts IV and V of this Manual.

(30) The terms "writings" and "recordings" have the same meaning as in Mil. R. Evid. 1001.

(31) The definitions and rules of construction in 1 U.S.C. §§ 1 through 5 and in 10 U.S.C. §§ 101 and 801."

Rule 104. Unlawful command influence

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 1(b), 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 ("These amendments shall take effect as of the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2016).

4. Text or summary of the amendment:

(b) R.C.M. 104(b)(l)(B) is amended to read as follows:

"(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates who, in accordance with 10 U.S.C. 1044e, are designated as Special Victims' Counsel."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 1, § 1(a), 83 Fed. Reg. 9889 (Mar. 1, 2018).

2. Effective date of the amendment: March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019)

4. Text or summary of the amendment:

Section 1: Part II of the Manual for Courts-Martial, United States is amended as follows:

(a) R.C.M. 104(b)(1)(B) is amended to read as follows:

"(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel who, in accordance with 10 U.S.C. 1044e, are designated as Special Victims' Counsel."

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(a), 88 Fed. Reg. 50537 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(a) R.C.M. 104 is amended to read as follows:

"Rule 104. Command influence

(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.

(3) *Scope.*

(A) *Instructions.* Paragraphs (a)(l) and (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)(l) and (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)(l) and (2) of this rule do not prohibit action by the Judge Advocate General concerned under R.C.M. 109.

(D) *Offense.* Paragraphs (a)(l) and (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)(l) and (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) *Communication between superiors and subordinates.*

(1) A superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of the UCMJ with a subordinate convening authority or officer, and a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under the UCMJ. (2) 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) *Prohibitions concerning evaluations.*

(1) *Evaluation of member or counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims' Counsel.

(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) *Command discretion.*

(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as provided in paragraph (d)(l) of this rule or as otherwise authorized under the UCMJ, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has the authority to dispose of the offenses."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(b)-(c), 88 Fed. Reg. 50603 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(b) R.C.M. 104(b)(2) is amended to read as follows:

"(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) 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 case; or

(B) any preliminary hearing officer or convening, referral, approving, or reviewing authority with respect to such preliminary hearing officer's or authority's acts concerning the following:

(i) any decision to place a service member into pretrial confinement;

(ii) disposition decisions;

(iii) rulings on pre-referral matters;

(iv) findings at a preliminary hearing;

(v) convening a court-martial;

(vi) decisions concerning plea agreements;

(vii) selecting members;

(viii) decisions concerning witness requests;

(ix) taking action on the findings or sentence;

(x) taking action on any clemency or deferment request; or

(xi) any appellate or post-trial review of a case."

(c) R.C.M. 104(c) is amended to read as follows:

"(c) *Prohibitions concerning evaluations.*

(1) *Evaluation of members, defense counsel, and special victims' counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims' Counsel."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(a)-(e), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 104(a)(2) is deleted.

(b) R.C.M. 104(a)(3) is redesignated as R.C.M. 104(a)(2)

(c) R.C.M. 104(a)(2)(A), as redesignated by Section 1(b) of this annex, is amended to read as follows:

"(A) Nothing in this rule prohibits 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."

(d) A new R.C.M. 104(b)(3) is inserted immediately after 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."

(e) A new R.C.M. 104(c)(2) is inserted immediately after 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."

Rule 105. Direct communication: convening authorities and staff judge advocates; among staff judge advocates

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(d), 88 Fed. Reg. 50604 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(d) R.C.M. 105 is amended to read as follows:

"Rule 105. Direct communications: convening authorities and staff judge advocates; among staff judge advocates; with special trial counsel

(a) *Convening authorities and staff judge advocates.* Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice, and may communicate directly with special trial counsel, although any input by the convening authority regarding case dispositions shall be non-binding on the special trial counsel for cases involving covered, known, and related offenses.

(b) *Among staff judge advocates and with the Judge Advocate General.* The staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, the Judge Advocate General, or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps.

(c) *Communications among special trial counsel, staff judge advocates, and convening authorities.* Special trial counsel, staff judge advocates, and convening authorities may communicate directly while ensuring that all communications regarding case disposition for covered, related, and known offenses are non-binding on the special trial counsel.

(d) *Free from unlawful or unauthorized influence or coercion.* All communications referenced in this rule shall be free from unlawful or unauthorized influence or coercion."

Rule 106. Delivery of military offenders to civilian authorities

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 107. Dismissed officer's right to request trial by court-martial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not amended the rule.

Rule 108. Rules of court

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not amended the rule.

Rule 109. Professional supervision of military judges and counsel

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(a), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: January 21, 1994. *See id.* at §§ 4, 4(g), 4(i) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> a. R.C.M. 109 is amended to read as follows:
>
> "(a) *In general.* Each Judge Advocate General is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates,

and other lawyers who practice in proceedings governed by the code and this Manual. To discharge this responsibility each Judge Advocate General may prescribe rules of professional conduct not inconsistent with this rule or this Manual. Rules of professional conduct promulgated pursuant to this rule may include sanctions for violations of such rules. Sanctions may include but are not limited to indefinite suspension from practice in courts-martial and in the Courts of Military Review. Such suspensions may only be imposed by the Judge Advocate General of the armed service of such courts. Prior to imposing any discipline under this rule, the subject of the proposed action must be provided notice and an opportunity to be heard. The Judge Advocate General concerned may upon good cause shown modify or revoke suspension. Procedures to investigate complaints against military trial judges and appellate military judges are contained in subsection (c) of this rule.

(b) *Action after suspension or disbarment.* When a Judge Advocate General suspends a person from practice or the Court of Military Appeals disbars a person, any Judge Advocate General may suspend that person from practice upon written notice and opportunity to be heard in writing.

(c) *Investigation of judges.*

(1) In general. These rules and procedures promulgated pursuant to Article 6a are established to investigate and dispose of charges, allegations, or information pertaining to the fitness of a military trial judge or appellate military judge to perform the duties of the judge's office.

(2) *Policy. Allegations* of judicial misconduct or unfitness shall be investigated pursuant to the procedures of this rule and appropriate action shall be taken. Judicial misconduct includes any act or omission that may serve to demonstrate unfitness for further duty as a judge, including but not limited to violations of applicable ethical standards.

(3) *Complaints.* Complaints concerning a military trial judge or appellate military judge will be forwarded to the Judge Advocate General of the service concerned or to a person designated by the Judge Advocate General concerned to receive such complaints.

(4) *Initial action upon receipt of a complaint.* Upon receipt, a complaint will be screened by the Judge Advocate General concerned or by the individual designated in subsection (c)(3) of this rule to receive complaints. An initial inquiry is necessary if the complaint, taken as true, would constitute judicial misconduct or unfitness for further service as a judge. Prior to the commencement of an initial inquiry, the Judge Advocate General concerned shall be notified that a complaint has been filed and that an initial inquiry will be conducted. The Judge Advocate General concerned may temporarily suspend the subject of a complaint from performing judicial duties pending the outcome of any inquiry or investigation conducted pursuant to this rule. Such inquiries or investigations shall be conducted with reasonable promptness.

(5) *Initial inquiry.*

(A) *In general.* An initial inquiry is necessary to determine if the complaint is substantiated. A complaint is substantiated upon finding that it is more likely than not that the subject judge has engaged in judicial misconduct or is otherwise unfit for further service as a judge.

(B) *Responsibility to conduct initial inquiry.* The Judge Advocate General concerned, or the person designated to receive complaints under subsection (c)(3) of this rule, will conduct or order an initial inquiry. The individual designated to conduct the inquiry should, if practicable, be senior to the subject of the complaint. If the subject of the complaint is a military trial judge, the individual designated to conduct the initial inquiry should, if practicable, be a military trial judge or an individual with experience as a military trial judge. If the subject of the complaint is an appellate military judge, the individual designated to conduct the inquiry should, if practicable, have experience as an appellate military judge.

(C) *Due process.* During the initial inquiry, the subject of the complaint will, at a minimum, be given notice and an opportunity to be heard.

(D) *Action following the initial inquiry.* If the complaint is not substantiated pursuant to subsection (c)(5)(A) of this rule, the complaint shall be dismissed as unfounded. If the complaint is substantiated, minor professional disciplinary action may be taken or the complaint may be forwarded, with findings and recommendations, to the Judge Advocate General concerned. Minor professional disciplinary action is defined as counselling or the issuance of an oral or written admonition or reprimand. The Judge Advocate General concerned will be notified prior to taking minor professional disciplinary action or dismissing a complaint as unfounded.

(6) *Action by the Judge Advocate General.*

(A) *In general.* The Judge Advocates General are responsible for the professional supervision and discipline of military trial and appellate military judges under their jurisdiction. Upon receipt of findings and recommendations required by subsection (c)(5)(D) of this rule the Judge Advocate General concerned will take appropriate action.

(B) *Appropriate Actions.* The Judge Advocate General concerned may dismiss the complaint, order an additional inquiry, appoint an ethics commission to consider the complaint, refer the matter to another appropriate investigative agency or take appropriate professional disciplinary action pursuant to the rules of professional conduct prescribed by the Judge Advocate General under subsection (a) of this rule. Any decision of a Judge Advocate General, under this rule, is final and is not subject to appeal.

(C) *Standard of Proof.* Prior to taking professional disciplinary action, other than minor disciplinary action as defined in subsection (c)(5)(D) of this rule, the Judge Advocate General concerned shall find, in writing, that the subject of the complaint engaged in judicial misconduct or is otherwise unfit for continued service as a military judge, and that such misconduct or unfitness is established by clear and convincing evidence.

(D) *Due process.* Prior to taking final action on the complaint, the Judge Advocate General concerned will ensure that the subject of the complaint is, at a minimum, given notice and an opportunity to be heard.

(7) *The Ethics Commission.*

(A) *Membership.* If appointed pursuant to subsection (c)(6)(B) of this rule, an ethics commission shall consist of at least three members. If the subject of the complaint is a military trial judge, the commission should include one or more military trial judges or individuals with experience as a military trial judge. If the subject of the complaint is an

appellate military judge, the commission should include one or more individuals with experience as an appellate military judge. Members of the commission should, if practicable, be senior to the subject of the complaint.

(B) *Duties.* The commission will perform those duties assigned by the Judge Advocate General concerned. Normally, the commission will provide an opinion as to whether the subject's acts or omissions constitute judicial misconduct or unfitness. If the commission determines that the affected judge engaged in judicial misconduct or is unfit for continued judicial service, the commission may be required to recommend an appropriate disposition to the Judge Advocate General concerned.

(8) *Rules of procedure.* The Secretary of Defense or the Secretary of the service concerned may establish additional procedures consistent with this rule and Article 6a."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

The title of R.C.M. 109 and its accompanying Discussions are amended and reflect Articles 6a and 26a, as added by Sections 5104 and 5185 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which adds military magistrates to those judicial personnel included in procedures relating to the investigation and disposition of matters pertaining to the fitness of military judges, and authorizes the Judge Advocate General to certify the qualifications of military magistrates, respectively.

Rule 201. Jurisdiction in general

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(a), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 201(e) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

"(2)(A) A commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces.

"(B) So much of the authority vested in the President under Article 22(a)(9) to empower any commanding officer of a joint command or joint task force to convene courts-martial is delegated to the Secretary of Defense, and such a commanding officer may convene general courts-martial for the trial of members of any of the armed forces.

"(C) A commander who is empowered to convene a court-martial under subsections (e)(2)(A) or (e)(2)(B) of this rule may expressly authorize a commanding officer of a subordinate joint command or subordinate joint task force who is authorized to convene special and summary courts-martial to convene such courts-martial for the trial of members of other armed forces under regulations which the superior command may prescribe.".

(2) Subparagraph (3)(A) is amended to read as follows:

"(A) The court-martial is convened by a commander authorized to convene courts-martial under subsection (e)(2) of this rule; or".

(3) The following new paragraphs are inserted at the end thereof:

"(6) When there is a disagreement between the Secretaries of two military departments or between the Secretary of a military department and the commander of a unified or specified combatant command or other joint command or joint task force as to which organization should exercise jurisdiction over a particular case or class of cases, the Secretary of Defense or an official acting under the authority of the Secretary of Defense shall designate which organization will exercise jurisdiction.

"(7) Except as provided in subsections (5) and (6) or as otherwise directed by the President or Secretary of Defense, whenever action under this Manual is required or authorized to be taken by a person superior to --

"(A) a commander of a unified or specified combatant command or;

"(B) a commander of any other joint command or joint task force that is not part of a unified or specified combatant command, "the matter shall be referred to the Secretary of the armed force of which the accused is a member. The Secretary may convene a court-martial, take other appropriate action, or, subject to R.C.M. 504(c), refer the matter to any person authorized to convene a court-martial of the accused.".

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(a), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

a. R.C.M. 201(f)(2)(B) is amended to read as follows:

"(i) Upon a finding of guilty, special courts-martial may adjudge, under limitations prescribed by this Manual, any punishment authorized under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than 1 year.

"(ii) A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged by a special court-martial unless:

"(a) Counsel qualified under Article 27(b) is detailed to represent the accused; and

"(b) A military judge is detailed to the trial, except in a case in which a military judge could not be detailed because of physical conditions or military exigencies. Physical conditions or military exigencies, as the terms are here used, may exist under rare circumstances, such as on an isolated ship on the high seas or in a unit in an inaccessible area, provided compelling reasons exist why the trial must be held at that time and at that place. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to detail a military judge. If a military judge cannot be detailed because of physical conditions or military exigencies, a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may be adjudged provided the other conditions have been met. In that event, however, the convening authority shall, prior to trial, make a written statement explaining why a military judge could not be obtained. This statement shall be appended to the record of trial and shall set forth in detail the reasons why a military judge could not be detailed, and why the trial had to be held at that time and place.".

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, §§ 1(b)-(f), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) R.C.M. 201(e)(2)(B) is amended by adding the word "general" between the words "convene" and "courts-martial" and by inserting the following words after "armed forces":

"assigned or attached to a combatant command or joint command".

(c) R.C.M. 201(e)(2)(C) is amended by inserting the words "assigned or attached to a joint command or joint task force," immediately before the words "under regulations which the superior command may prescribe".

(d) R.C.M. 201(e)(3) is amended by inserting the following immediately after the words "armed force":

", using the implementing regulations and procedures prescribed by the Secretary concerned of the military service of the accused,".

(e) R.C.M. 201(e)(4) is amended by adding the words ", member, or counsel" after the words "military judge".

(f) R.C.M. 201(f)(1)(A)(iii)(b) is amended to read as follows:

"(b) The case has not been referred with a special instruction that the case is to be tried as capital."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(a)-(c), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 201 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 201 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of September 16, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 201(f)(1) is amended to insert the following after "Types of courts-martial" and before "(1) General courts-martial":

"[Note: R.C.M. 201(f)(1)(D) and (f)(2)(D) apply to offenses committed on or after 24 June 2014.]"

(b) R.C.M. 201(f)(l)(D) is inserted immediately after R.C.M. 20l(f)(l)(C) and reads as follows:

"(D) Jurisdiction for Certain Sexual Offenses. Only a general court-martial has jurisdiction to try offenses under Article 120(a), 120(b), 120b(a), and l20b(b), forcible sodomy under Article 125, and attempts thereof under Article 80."

(c) R.C.M. 201(f)(2)(D) is inserted immediately after R.C.M. 201(f)(2)(C)(iii) and reads as follows:

"(D) Certain Offenses under Articles 120, 120b, and 125. Notwithstanding subsection (f)(2)(A), special courts-martial do not have jurisdiction over offenses under Articles 120(a), l20(b), 120b(a), and l20b(b), forcible sodomy under Article 125, and attempts thereof under Article 80. Such offenses shall not be referred to a special court-martial."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(a), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *Id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 201(c) is amended to read as follows:

"(c) Contempt. A judge detailed to a court-martial may punish for contempt any person who uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial; disturbs the proceedings of the court-martial by any riot or disorder; or willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial. The punishment may not exceed confinement for 30 days or a fine of $1,000, or both."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 201(c), which addressed contempt, is deleted. See R.C.M. 809 for procedures and standards for contempt proceedings and the exercise of contempt authority by judicial officers under Article 98.
>
> R.C.M. 201(f)(1)(A)(i), R.C.M. 201(f)(1)(D), and the Discussion accompanying R.C.M. 201(g) are amended to reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).
>
> R.C.M. 201(f)(1)(D) and (f)(2)(D) are amended and eliminate redundancies and reflect the dates of applicability set forth in Section 1705(c) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672, 960 (2013).
>
> R.C.M. 201(f)(2)(B)(ii) is amended and implements Articles 16 and 19, as amended by Sections 5161 and 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which eliminate special courts-martial without a military judge and authorize a convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.
>
> R.C.M. 201(f)(2)(E) and the accompanying Discussion are new and reflect Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes a convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(b), 88 Fed. Reg. 50540 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(b) R.C.M. 201(e) is amended to read as follows:

"(e) *Reciprocal jurisdiction*.

(1) Each armed force has court-martial jurisdiction over all persons subject to the UCMJ.

(2)(A) A commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces.

(B) So much of the authority vested in the President under Article 22(a)(9), to empower any commanding officer of a joint command or joint task force to convene courts-martial is delegated to the Secretary of Defense, and such a commanding officer may convene general courts-martial for the trial of members of any of the armed forces assigned or attached to a combatant command or joint command.

(C) A commander who is empowered to convene a court-martial under subparagraphs (e)(2)(A) or (e)(2)(B) of this rule may expressly authorize a commanding officer of a subordinate joint command or subordinate joint task force who is authorized to convene special and summary courts-martial to convene such courts-martial for the trial of members of other armed forces assigned or attached to a joint command or joint task force, under regulations that the superior command may prescribe.

(3)(A) An accused should not ordinarily be tried by a court-martial convened by a member of a different armed force except when the circumstances described in subparagraphs (e)(2)(A) or (B) of this rule exist. However, failure to comply with this non-binding policy does not affect an otherwise valid referral.

(B) The non-binding policy stated by subparagraph (e)(3)(A) of this rule does not apply when one or more of the following circumstances exists:

(i) The court-martial is convened by a commander authorized to convene courts martial under paragraph (e)(2) of this rule;

(ii) The accused cannot be delivered to the armed force of which the accused is a member without manifest injury to the armed forces;

(iii) The court-martial is convened by a member of the Space Force to try a member of the Air Force; or

(iv) The court-martial is convened by a member of the Air Force to try a member of the Space Force.

(4) Nothing in this rule prohibits detailing to a court-martial a military judge, member, or counsel who is a member of an armed force different from that of the accused, the convening authority, or both.

(5) When a member of one armed force is tried by a court-martial convened by a member of another armed force, the court-martial will use the implementing regulations and

procedures prescribed by the Secretary concerned of the military service of the accused. In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command that held the trial, where that review is required by the UCMJ, shall be carried out by the department that includes the armed force of which the accused is a member.

(6) Unless otherwise directed by the President or Secretary of Defense, whenever action under this Manual is required or authorized to be taken by a person superior to—

(A) a commander of a unified or specified combatant command; or

(B) a commander of any other joint command or joint task force that is not part of a unified or specified combatant command,

the matter shall be referred to the Secretary of the armed force of which the accused is a member. The Secretary may convene a court-martial, take other appropriate action, or, subject to R.C.M. 504(c), refer the matter to any person authorized to convene a court-martial of the accused.

(7) When there is a disagreement between the Secretaries of two military departments or between the Secretary of a military department and the commander of a unified or specified combatant command or other joint command or joint task force as to which organization should exercise jurisdiction over a particular case or class of cases, the Secretary of Defense or an official acting under the authority of the Secretary of Defense shall designate which organization will exercise jurisdiction."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(e)-(g), 88 Fed. Reg. 50605 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(e) R.C.M. 201(d)(2) is amended to read as follows:

"(2) An act of omission that violates both the UCMJ and local criminal law, foreign or domestic, may be tried by a court-martial, or by a proper civilian tribunal, foreign or domestic, or, subject to R.C.M. 907(b)(2)(C) and regulations of the Secretary concerned, by both."

(f) R.C.M. 201(f)(l)(D) is amended to read as follows:

"(D) *Jurisdiction for Certain Sexual Offenses.* Only a general court-martial has jurisdiction to try offenses under Articles 120(a), 120(b), 120b(a), and 120b(b), and attempts thereof under Article 80."

(g) R.C.M. 201(f)(2)(C) is amended to read as follows:

"(C) *Capital offenses.*

(i) A capital offense for which there is prescribed a mandatory punishmentbeyond the punitive power of a special court-martial shall not be referred to such a court-martial.

(ii) Other than offenses described in (C)(i):

(I) a general court-martial convening authority over the command that includes the accused may permit any capital offense to be referred to a special court-martial for trial.

(II) a special trial counsel exercising authority over a capital offense may refer such an offense to a special court-martial for trial.

(III) The Secretary concerned may authorize, by regulation, special court-martial convening authorities to refer capital offenses to trial by a special court-martial without first obtaining the consent of the general court-martial convening authority."

Rule 202. Persons subject to jurisdiction of courts-martial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 203. Jurisdiction over the offense

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 204. Jurisdiction over certain reserve component personnel

The President promulgated the original version of this rule in the amendments made by Executive Order 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987)), described below:

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(b), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The addition of Rule for Courts-Martial 204 . . . shall apply to any offense committed on or after March 12, 1987." *Id.* § 5(a). *See also id.* §§ 5(e), 5(g)

(providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. Chapter II is amended by inserting the following new Rule following R.C.M. 203:

"Rule 204. Jurisdiction over reserve component personnel

"(a) Service regulations. The Secretary concerned shall prescribe regulations setting forth rules and procedures for the exercise of court-martial jurisdiction and nonjudicial punishment authority over reserve component personnel under Articles 2(a)(3) and 2(d), subject to the limitations of this Manual and the UCMJ.

"(b)(1) General and special court-martial proceedings. A member of a reserve component must be on active duty prior to arraignment at a general or special court-martial. A member ordered to active duty pursuant to Article 2(d) may be retained on active duty to serve any adjudged confinement or other restriction on liberty if the order to active duty was approved in accordance with Article 2(d)(5), but such member may not be retained on active duty pursuant to Article 2(d) after service of the confinement or other restriction on liberty. All punishments remaining unserved at the time the member is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

"(2) Summary courts-martial. A member of a reserve component may be tried by summary court-martial either while on active duty or inactive-duty training. A summary court-martial conducted during inactive-duty training may be in session only during normal periods of such training. The accused may not be held beyond such periods of training for trial or service of any punishment. All punishments remaining unserved at the end of a period of active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive-duty training or active duty.

"(c) Applicability. This subsection is not applicable when a member is held on active duty pursuant to R.C.M. 202(c).

"(d) Changes in type of service. A member of a reserve component at the time disciplinary action is initiated, who is alleged to have committed an offense while on active duty or inactive-duty training, is subject to court-martial jurisdiction without regard to any change between active and reserve service or within different categories of reserve service subsequent to commission of the offense. This subsection does not apply to a person whose military status was completely terminated after commission of an offense.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Exec. Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 204(d) is amended and implements Article 2(a)(3), as amended by Section 5102 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which revises UCMJ jurisdiction over reservists to cover periods incident to inactive-duty training.

Rule 301. Report of offense

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(h), 88 Fed. Reg. 50606 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> "Rule 301. Report of offense
>
> (a) *Who may report.* Any person may report an offense subject to trial by court-martial.
>
> (b) *To whom reports are conveyed*. Ordinarily, any military authority who receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. Competent authority superior to that commander may direct otherwise.
>
> (c) *Special trial counsel.* All reports of covered offenses shall be forwarded promptly to a special trial counsel. A special trial counsel shall have the authority to determine whether

a reported offense is a covered, known, or related offense in accordance with R.C.M. 303A."

Rule 302. Apprehension

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(a), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 302(b)(2) is amended to read as follows:

"(2) Commissioned, warrant, petty, and noncommissioned officers. All commissioned, warrant, petty, and noncommissioned officers on active duty or inactive-duty training."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 302(e)(2)(A) is amended and updates cross-references to the Military Rules of Evidence.

R.C.M. 302(e)(2)(B) is amended and reflects exigent circumstances under which an apprehension may be made in a private dwelling.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(i)-(j), 88 Fed. Reg. 50607 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(i) R.C.M. 302(b)(l) is amended to read as follows:

"(1) *Military law enforcement officials.* Persons designated by proper authorities to perform military criminal investigative, guard, or police duties, whether subject to the UCMJ or not, when in each of the foregoing instances, the official making the apprehension is in the execution of law enforcement duties;"

(j) R.C.M. 302(c) is amended to read as follows:

"(c) *Grounds for apprehension.* A person subject to the UCMJ or trial thereunder may be apprehended for an offense triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exists when there is a reasonable belief that an offense has been or is being committed and the person to be apprehended committed or is committing it. Persons authorized to apprehend under R.C.M. 302(b)(2) may also apprehend persons subject to the UCMJ who take part in quarrels, frays, or disorders, wherever they occur."

Rule 303. Preliminary inquiry into reported offenses

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(k), 88 Fed. Reg. 50607 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made

by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(k) R.C.M. 303 is amended to read as follows:

"Rule 303. Preliminary inquiry into reported offenses

Except for covered offenses as defined by Article 1(17), upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses. A commander who receives a report of a covered offense shall promptly forward the report to a special trial counsel in accordance with R.C.M. 301(c) and regulations prescribed by the Secretary concerned."

Rule 303A. Preliminary inquiry into reported offenses

The President promulgated this rule in Executive Order No. 14103, Annex 2 § 2(l), 88 Fed. Reg. 50535, 50607 (Aug. 2, 2023). An edition of the M.C.M. containing the rule is forthcoming. The President has not amended the rule.

Rule 304. Pretrial restraint

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 305. Pretrial confinement

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(b), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. The subsection designation of R.C.M. 305 (l) is amended by striking out "(l)" and inserting in lieu thereof "(l)".

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 1(b)-(d), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only to cases in which pretrial confinement is imposed on or after January 21, 1994." *Id.* § 4(e).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. R.C.M. 305(f) is amended to read as follows:

"Military Counsel. If requested by the prisoner and such request is made known to military authorities, military counsel shall be provided to the prisoner before the initial review under subsection (i) of this rule or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the prisoner shall be so informed. Unless otherwise provided by regulations of the Secretary concerned, a prisoner does not have a right under this rule to have military counsel of the prisoner's own selection.".

c. R.C.M. 305(h)(2)(A) is amended to read as follows:

"(A) Decision. Not later than 72 hours after the commander's ordering of a prisoner into pretrial confinement, or after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue.".

d. R.C.M. 305(i)(1) is amended to read as follows:

"(1) In general. A review of the adequacy of probable cause to believe the prisoner has committed an offense and of the necessity for continued pretrial confinement shall be made within 7 days of the imposition of confinement under military control. If the prisoner was apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement shall count as one day and the date of the review shall also count as one day.".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(a), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

a. R.C.M. 305(g) through 305(k) are amended to read as follows:

"(g) Who may direct release from confinement. Any commander of a prisoner, an officer appointed under regulations of the Secretary concerned to conduct the review under subsections (i) and/or (j) of this rule or, once charges have been referred, 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 the purposes of this subsection, "any commander" includes the immediate or higher commander of the prisoner and the commander of the installation on which the confinement facility is located.

(h) Notification and action by commander.

(1) Report. Unless the commander of the prisoner ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer into whose charge the prisoner was committed shall, within 24 hours after that commitment, cause a report to be made to the commander that shall contain the name of the prisoner, the offenses charged against the prisoner, and the name of the person who ordered or authorized confinement.

(2) Action by commander.

(A) Decision. Not later than 72 hours after the commander's ordering of a prisoner into pretrial confinement or, after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander's compliance with this subsection may also satisfy the 48-hour probable cause determination of subsection R.C.M. 305(i)(1) below, provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under military control. Nothing in subsections R.C.M. 305(d), R.C.M. 305(i)(1), or this subsection prevents a neutral and detached commander from completing the 48-hour probable cause determination and the 72-hour commander's decision immediately after an accused is ordered into pretrial confinement.

(B) Requirements for confinement. The commander shall direct the prisoner's release from pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(i) An offense triable by a court-martial has been committed;

(ii) The prisoner committed it; and

(iii) Confinement is necessary because it is foreseeable that:

(a) The prisoner will not appear at trial, pretrial hearing, or investigation, or

(b) The prisoner will engage in serious criminal misconduct; and

(iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, serious injury to others, or other offenses that pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, "national security" means the national defense and foreign relations of the United States and specifically includes: military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(C) 72-hour memorandum. If continued pretrial confinement is approved, the commander shall prepare a written memorandum that states the reasons for the conclusion that the requirements for confinement in subsection (h)(2)(B) of this rule have been met. This memorandum may include hearsay and may incorporate by reference other documents, such as witness statements, investigative reports, or official records. This memorandum shall be forwarded to the 7-day reviewing officer under subsection (i)(2) of this rule. If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared; however, additional information may be added to the memorandum at any time.

(i) Procedures for review of pretrial confinement.

(1) 48-hour probable cause determination. Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control. If the prisoner is apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion.

(2) 7-day review of pretrial confinement. Within 7 days of the imposition of confinement, a neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned shall review the probable cause determination and necessity for continued pretrial confinement. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement under military control shall count as one day and the date of the review shall also count as one day.

(A) Nature of the 7-day review.

(i) Matters considered. The review under this subsection shall include a review of the memorandum submitted by the prisoner's commander under subsection (h)(2)(C) of this rule. Additional written matters may be considered, including any submitted by the accused. The prisoner and the prisoner's counsel, if any, shall be allowed to appear before the 7-day reviewing officer and make a statement, if practicable. A representative of the command may also appear before the reviewing officer to make a statement.

(ii) Rules of evidence. Except for Mil. R. Evid., Section V (Privileges) and Mil. R. Evid. 302 and 305, the Military Rules of Evidence shall not apply to the matters considered.

(iii) Standard of proof. The requirements for confinement under subsection (h)(2)(B) of this rule must be proved by a preponderance of the evidence.

(B) Extension of time limit. The 7-day reviewing officer may, for good cause, extend the time limit for completion of the review to 10 days after the imposition of pretrial confinement.

(C) Action by 7-day reviewing officer. Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release.

(D) Memorandum. The 7-day reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. A copy of the memorandum and of all documents considered by the 7-day reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request.

(E) Reconsideration of approval of continued confinement. The 7-day reviewing officer shall upon request, and after notice to the parties, reconsider the decision to confine the prisoner based upon any significant information not previously considered.

(j) Review by military judge. Once the charges for which the accused has been confined are referred to trial, the military judge shall review the propriety of the pretrial confinement upon motion for appropriate relief.

(1) Release. The military judge shall order release from pretrial confinement only if:

(A) The 7-day reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to the military judge justifying continuation of pretrial confinement under subsection (h)(2)(B) of this rule;

(B) Information not presented to the 7-day reviewing officer establishes that the prisoner should be released under subsection (h)(2)(B) of this rule; or

(C) The provisions of subsection (i)(1) or (2) of this rule have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under subsection (h)(2)(B) of this rule.

(2) Credit. The military judge shall order administrative credit under subsection (k) of this rule for any pretrial confinement served as a result of an abuse of discretion or failure to comply with the provisions of sub-sections (f), (h), or (i) of this rule.

(k) Remedy. The remedy for noncompliance with subsections (f), (h), (i), or (j) of this rule shall be an administrative credit against the sentence adjudged for any confinement served as the result of such noncompliance. Such credit shall be computed at the rate of 1 day credit for each day of confinement served as a result of such noncompliance. The military judge may order additional credit for each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances. This credit is to be applied in addition to any other credit to which the accused may be entitled as a result of pretrial confinement served. This credit shall be applied first against any confinement adjudged. If no confinement is adjudged, or if the confinement adjudged is insufficient to offset all the

credit to which the accused is entitled, the credit shall be applied against adjudged hard labor without confinement, restriction, fine, and forfeiture of pay, in that order, using the conversion formula under R.C.M. 1003(b)(6) and (7). For purposes of this subsection, 1 day of confinement shall be equal to 1 day of total forfeitures or a like amount of fine. The credit shall not be applied against any other form of punishment."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(d)-(h), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 305 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 305 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(d) R.C.M. 305(i)(2)(A)(i) is amended to read as follows:

"(i) Matters considered. The review under this subsection shall include a review of the memorandum submitted by the prisoner's commander under subsection (h)(2)(C) of this rule. Additional written matters may be considered, including any submitted by the prisoner. The prisoner and the prisoner's counsel, if any, shall be allowed to appear before the 7-day reviewing officer and make a statement, if practicable. A representative of the command may also appear before the reviewing officer to make a statement."

(e) R.C.M. 305(i)(2)(A)(iv) is inserted immediately after R.C.M. 305(i)(2)(A)(iii) and reads as follows:

"(iv) Victim's right to be reasonably heard. A victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and timely notice of the 7-day review; the right to confer with the representative of the command and counsel for the government, if any, and the right to be reasonably heard during the review. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel. The victim of an alleged offense shall be notified of these rights in accordance with regulations of the Secretary concerned."

(f) R.C.M. 305(i)(2)(C) is amended to read as follows:

"(C) Action by 7-day reviewing officer. Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release. If the reviewing officer orders immediate release, a victim of an alleged offense committed by the prisoner has the

right to reasonable, accurate, and timely notice of the release, unless such notice may endanger the safety of any person."

(g) R.C.M. 305(i)(2)(D) is amended to read as follows:

"(D) Memorandum. The 7-day reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. The memorandum shall also state whether the victim was notified of the review, was given the opportunity to confer with the representative of the command or counsel for the government, and was given a reasonable opportunity to be heard. A copy of the memorandum and all documents considered by the 7-day reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request."

(h) R.C.M. 305(n) is inserted immediately after R.C.M. 305(m)(2) and reads as follows:

"(n) Notice to victim of escaped prisoner. A victim of an alleged offense committed by the prisoner for which the prisoner has been placed in pretrial confinement has the right to reasonable, accurate, and timely notice of the escape of the prisoner, unless such notice may endanger the safety of any person."

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2.

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

(c) R.C.M. 305(h)(2)(B)(iii)(a) is amended to read as follows:

"(a) The prisoner will not appear at trial, pretrial hearing, preliminary hearing, or investigation, or"

(d) R.C.M. 305(i)(2)(A)(iv) is amended to read as follows:

"(iv) Victim's right to be reasonably heard. A victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and timely notice of the 7-day review; the right to confer with the representative of the command and counsel for the government, if any; and the right to be reasonably heard during the review. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel and the right to be reasonably protected from the prisoner during the 7-day review. The victim of an alleged offense shall be notified of these rights in accordance with regulations of the Secretary concerned."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 305 is amended throughout the rule and replaces the term "prisoner" with the term "confinee."
>
> R.C.M. 305(k) is amended and updates cross-references applicable to administrative credit against the sentenced adjudged for confinement served as a result of noncompliance with R.C.M. 305(f), (h), (i), or (j).
>
> R.C.M. 305(m)(1) and (2) are amended and update cross-references.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(c), 88 Fed. Reg. 50543 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (c) R.C.M. 305(j) is amended to read as follows:
>
> "(j) *Review by military judge*. Once the charges for which the accused has been confined are referred to trial, or in a pre-referral proceeding conducted in accordance with R.C.M. 309, the military judge shall review the propriety of pretrial confinement upon motion for appropriate relief.
>
> (1) *Release*. The military judge shall order release from pretrial confinement only if:
>
> (A) The 7-day reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to the military judge justifying continuation of pretrial confinement under subparagraph (h)(2)(B) of this rule;
>
> (B) Information not presented to the 7-day reviewing officer establishes that the confinee should be released under subparagraph (h)(2)(B) of this rule; or
>
> (C) The provisions of paragraph (i)(l) or (2) of this rule have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under subparagraph (h)(2)(B) of this rule.

(2) *Credit*. Upon sentencing, the military judge shall order administrative credit under subsection (k) of this rule for any pretrial confinement served as a result of an abuse of discretion or failure to comply with the provisions of subsections (f), (h), or (i) of this rule."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(m), 88 Fed. Reg. 50608 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(m) R.C.M. 305 is amended to read as follows:

"Rule 305. Pretrial confinement

(a) *In general.* Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of charges.

(b) *Who may be confined* Any person who is subject to trial by court-martial may be confined if the requirements of this rule are met.

(c) *Who may order confinement. See* R.C.M. 304(b).

(d) *When a person may be confined* No person may be ordered into pretrial confinement except for probable cause. Probable cause to order pretrial confinement exists when there is a reasonable belief that:(1) An offense triable by court-martial has been committed;

(2) The person confined committed it; and

(3) Confinement is required by the circumstances.

(e) *Advice to the accused upon confinement.* Each person confined shall be promptly informed of: (1) The nature of the offenses for which held;

(2) The right to remain silent and that any statement made by the person may be used against the person;

(3) The right to retain civilian counsel at no expense to the United States, and the right to request assignment of military counsel; and

(4) The procedures by which pretrial confinement will be reviewed.

(f) *Notification to Special Trial Counsel.* If a person who is alleged to have committed a covered offense is ordered into or released from pretrial confinement, the individual

ordering confinement or authorizing release shall immediately notify a special trial counsel in accordance with regulations prescribed by the Secretary concerned.

(g) *Military counsel.* If requested by the confinee and such request is made known to military authorities, military counsel shall be provided to the confinee before the initial review under R.C.M. 305(j) or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the confinee shall be so informed. Unless otherwise provided by regulations of the Secretary concerned, a confinee does not have a right under this rule to have military counsel of the confinee's own selection.

(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 have been referred, 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.

(i) *Notification and action by commander.*

(1) *Report.* Unless the commander of the confinee ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer into whose charge the confinee was committed shall, within 24 hours after that commitment, cause a report to be made to the commander that shall contain the name of the confinee, the offenses charged against the confinee, and the name of the person who ordered or authorized confinement.

(2) *Action by commander*.

(A) *Decision.* Not later than 72 hours after the commander's ordering of a confinee into pretrial confinement or, after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander's compliance with this paragraph (R.C.M. 305(i)(2)) may also satisfy the 48-hour probable cause determination of R.C.M. 305(j)(1), provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under military control. Nothing in R.C.M. 305(d), this subparagraph (R.C.M. 305(i)(2)(A)), or R.C.M. (j)(l) prevents a neutral and detached commander from completing the 48-hour probable cause determination and the 72-hour commander's decision immediately after an accused is ordered into pretrial confinement.

(B) *Requirements for confinement.* The commander shall direct the confinee's release from pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(i) An offense triable by a court-martial has been committed;

(ii) The confinee committed it;

(iii) Confinement is necessary because it is foreseeable that:

(a) The confinee will not appear at trial, pretrial hearing, or preliminary hearing, or

(b) The confinee will engage in serious criminal misconduct; and

(iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, serious injury of others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, "national security" means the national defense and foreign relations of the United States and specifically includes: a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(C) *72-hour memorandum.* If continued pretrial confinement is approved, the commander shall prepare a written memorandum that states the reasons for the conclusion that the requirements for confinement in R.C.M. 305(i)(2)(B) have been met. This memorandum may include hearsay and may incorporate by reference other documents, such as witness statements, investigative reports, or official records. This memorandum shall be forwarded to the 7-day reviewing officer under R.C.M. 305(i)(2). If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared; however, additional information may be added to the memorandum at any time.

(j) *Procedures for review of pretrial confinement.*

(1) *48-hour probable cause determination.* Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control. If the confinee is apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the confinee under military control in a timely fashion.

(2) *7-day review of pretrial confinement.* Within 7 days of the imposition of confinement, a neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned shall review the probable cause determination and necessity for continued pretrial confinement. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement under military control shall count as one day and the date of the review shall also count as one day.

(A) *Nature of the 7-day review.*

(i) *Matters considered*. The review under this clause (R.C.M. 305(i)(2)(A)(i)) shall include a review of the memorandum submitted by the confinee's commander under R.C.M. 305(i)(2)(C). Additional written matters may be considered, including any submitted by the confinee. The confinee and the confinee' s counsel, if any, shall be allowed to appear before the 7-day reviewing officer and make a statement, if practicable. A representative of the command may also appear before the reviewing officer to make a statement.

(ii) *Rules of evidence.* Except for Mil. R. Evid., Section V (Privileges) and Mil. R. Evid. 302 and 305, the Military Rules of Evidence shall not apply to the matters considered.

(iii) *Standard of proof.* The requirements for confinement under R.C.M. 305(h)(2)(B) must be proved by a preponderance of the evidence.

(iv) *Victim's right to be reasonably heard.* A victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the 7-day review; the right to confer with the representative of the command and counsel for the Government, if any; and the right to be reasonably heard during the review. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel and the right to be reasonably protected from the confinee during the 7-day review. Notice of these rights shall be given to the victim, or victim's counsel, if any, in accordance with regulations of the Secretary concerned.

(B) *Extension of time limit.* The 7-day reviewing officer may, for good cause, extend the time limit for completion of the review to 10 days after the imposition of pretrial confinement.

(C) *Action by 7-day reviewing officer.* Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release. If the reviewing officer orders immediate release, a victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the release, unless such notice may endanger the safety of any person.

(D) *Memorandum.* The 7-day reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. The memorandum shall also state whether the victim was represented by counsel, whether the victim was notified of the review, was given the opportunity to confer with the representative of the command or counsel for the Government and was given a reasonable opportunity to be heard. A copy of the memorandum and all documents considered by the 7-day reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request.

(E) *Reconsideration of approval of continued confinement*. The 7-day reviewing officer shall upon request, and after notice to the parties, reconsider the decision to confine the confinee based upon any significant information not previously considered.

(k) *Review by military judge.* Once the charges for which the accused has been confined are referred to trial, or in a pre-referral proceeding conducted in accordance with R.C.M. 309, the military judge shall review the propriety of pretrial confinement upon motion for appropriate relief.

(1) *Release*. The military judge shall order release from pretrial confinement only if:

(A) The 7-day reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to the military judge justifying continuation of pretrial confinement under R.C.M. 305(i)(2)(B);

(B) Information not presented to the 7-day reviewing officer establishes that the confinee should be released under R.C.M. 305(i)(2)(B); or

(C) The provisions of R.C.M. 305(j)(l) or (2) have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under R.C.M. 305(i)(2)(B).

(2) *Credit.* Upon sentencing, the military judge shall order administrative credit under R.C.M. 305(1) for any pretrial confinement served as a result of an abuse of discretion or failure to comply with the provisions of R.C.M. 305(g), (i), or (j).

(1) *Remedy.* The remedy for noncompliance with R.C.M. 305(g), (i), (j), or (k) shall be an administrative credit against the sentence adjudged for any confinement served as the result of such noncompliance. Such credit shall be computed at the rate of 1 day credit for each day of confinement served as a result of such noncompliance. The military judge may order additional credit for each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances. This credit is to be applied in addition to any other credit to which the accused may be entitled as a result of pretrial confinement served. This credit shall be applied first against any confinement adjudged. If no confinement is adjudged, or if the confinement adjudged is insufficient to offset all the credit to which the accused is entitled, the credit shall be applied against hard labor without confinement using the conversion formula under R.C.M. 1003(b)(6), restriction, fine, and forfeiture of pay, in that order. For purposes of R.C.M. 305(1), 1 day of confinement shall be equal to 1 day of total forfeiture or a like amount of fine. The credit shall not be applied against any other form of punishment.

(m) *Confinement after release.* No person whose release from pretrial confinement has been directed by a person authorized in R.C.M. 305(h) may be confined again before completion of trial except upon discovery, after the order of release, of evidence or of misconduct which, either alone or in conjunction with all other available evidence, meets the criteria for confinement under R.C.M. 305(i)(2)(B).

(n) *Exceptions.*

(l) *Operational necessity*. The Secretary of Defense may suspend application of R.C.M. 305(e)(3), (e)(4), (g), (i)(2)(A) or (C), or (j) to specific units or in specified areas when operational requirements of such units or in such areas would make application of such provisions impracticable.

(2) *At sea.* R.C.M. 305(e)(3), (e)(4), (g), (i)(2)(C), and (j) shall not apply in the case of a person on board a vessel at sea. In such situations, confinement on board the vessel at sea may continue only until the person can be transferred to a confinement facility ashore. Such transfer shall be accomplished at the earliest opportunity permitted by the operational requirements and mission of the vessel. Upon such transfer, the memorandum required by R.C.M. 305(i)(2)(C) shall be transmitted to the reviewing officer under R.C.M. 305(j) and shall include an explanation of any delay in the transfer.

(o) *Notice to victim of escaped confinee.* Reasonable, accurate, and timely notice of the escape of the prisoner shall be provided to the victim of an alleged offense committed by the confinee for which the confinee has been placed in pretrial confinement or such victim's counsel, if any, unless such notice may endanger the safety of any person."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(f), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(f) R.C.M. 305(h) is amended to read as follows:

"(h) Who may direct release from confinement. Any commander of a confinee or an officer appointed under regulations of the Secretary concerned to conduct a pretrial confinement review under R.C.M. 305(j) or (k) may direct the confinee's release. A military judge may direct release from pretrial confinement once charges for which the accused has been confined are referred or as part of a pre-referral proceeding conducted in accordance with R.C.M. 309. 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."

Rule 306. Initial disposition

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2.

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

(e) A new R.C.M. 306(e) is inserted immediately after R.C.M. 306(d) and reads as follows:

"(e) Sex-related offenses.

(1) For purposes of this subsection, a "sex-related offense" means any allegation of a violation of Article 120, 120a, 120b, 120c, or 125, or any attempt thereof under Article 80, UCMJ.

(2) Under such regulations as the Secretary concerned may prescribe, for alleged sexrelated offenses committed in the United States, the victim of the sex-related offense shall be provided an opportunity to express views as to whether the offense should be prosecuted

by court-martial or in a civilian court with jurisdiction over the offense. The commander, and if charges are preferred, the convening authority, shall consider such views as to the victim's preference for jurisdiction, if available, prior to making an initial disposition decision. For purposes of this rule, "victim" is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an alleged sex-related offense as defined in subparagraph (1) of this rule.

(3) Under such regulations as the Secretary concerned may prescribe, if the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the commander, and if charges are preferred, the convening authority, shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution. If the commander, and if charges are preferred, the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court, the convening authority shall ensure the victim is notified."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 306(e)(1) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 306(e)(3) is amended and clarifies that, under such regulations as the Secretary may prescribe, if no charges are preferred for an alleged sex-related offense, if the commander learns of any decision by civilian authorities to prosecute or not prosecute the offense in civilian court, the commander shall ensure the victim is notified.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(n)-(q), 88 Fed. Reg. 50616 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National

Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(n) The title of R.C.M. 306 is amended to read as follows:

"Rule 306. Initial disposition of offenses over which special trial counsel does not exercise authority".

(o) R.C.M. 306(a) is amended to read as follows

"(a) *Who may dispose of offenses.*

(1) Except for offenses over which a special trial counsel has exercised authority and has not deferred, each commander has discretion to dispose of offenses by members of that command in accordance with this rule.

(2) Ordinarily the immediate commander of a person accused or suspected of committing offenses over which a special trial counsel has not exercised authority or has deferred initially determines how to dispose of those offenses. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld."

(p) R.C.M. 306(c) is amended to read as follows:

"(c) *Disposition of offenses.* Within the limits of the commander's authority and subject to R.C.M. 306A, a commander may take the actions set forth in this subsection (R.C.M. 306(c)) to initially dispose of a charge or suspected offense.

(l) *No action.* A commander may decide to take no action.

(2) *Administrative action.* A commander may take or initiate administrative action, in addition to or instead of other action taken under this rule, subject to regulations of the Secretary concerned.

(3) *Nonjudicial punishment.* A commander may consider the matter pursuant to Article 15, nonjudicial punishment. *See* Part V.

(4) *Disposition of charges.* Charges may be disposed of in accordance with R.C.M. 401.

(5) *Forwarding for disposition.* A commander may forward a report of suspected offenses or charges to a superior or subordinate authority for disposition."

(q) R.C.M. 306(e)(l) is amended to read as follows:

"(1) For purposes of this subsection (R.C.M. 306(e)), a "sex-related offense" means any allegation of a violation of Article 120, 120b, 120c, or 130, or any attempt thereof under Article 80, occurring on or before December 27, 2023."

Rule 306A. Initial disposition of offenses over which a special counsel exercises authority

The President promulgated this rule in Executive Order No. 14103, Annex 2 § 2(l), 88 Fed. Reg. 50535, 50618 (Aug. 2, 2023). An edition of the M.C.M. containing the rule is forthcoming. The President has not amended the rule.

Rule 307. Preferral of charges

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(a), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 307(c)(3) is amended to read as follows:

"Specification. A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication. Except for aggravating factors under R.C.M. 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required."

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(g), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) R.C.M. 307(c)(4) is amended by inserting the following at the end thereof:

"What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 2(b)-(c), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *Id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) R.C.M. 307(c)(3) is amended to read as follows:

"(3) Specification. A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication; however, specifications under Article 134 must expressly allege the terminal element. Except for aggravating factors under R.C.M 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required."

(c) R.C.M. 307(c)(4) is amended to read as follows:

"(4) Multiple offenses. Charges and specifications alleging all known offenses by an accused may be preferred at the same time. Each specification shall state only one offense. What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person. Unreasonable multiplication of charges is addressed in R.C.M. 906(b)(12); multiplicity is addressed in R.C.M. 907(b)(3)(B); and punishment limitations are addressed in R.C.M. 1003(c)(1)(C)."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 307(b) is amended and implements Article 30, as amended by Section 5201 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).
>
> R.C.M. 307(c)(4) is amended and deletes the last sentence.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(d), 88 Fed. Reg. 50543 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (d) R.C.M. 307(b) is amended to read as follows:
>
> "(b) *How charges are preferred; oath.* In preferring charges and specifications—
>
> (1) The person preferring the charges and specifications must sign them under oath before a commissioned officer of the armed forces authorized to administer oaths; and
>
> (2) The writing under paragraph (b)(l) must state that—
>
> (A) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and
>
> (B) the matters set forth in the charges and specifications are true to the best of the knowledge and belief of the signer.
>
> (3) Any procedure, including those by remote means, which appeals to the conscience of the person to whom the oath is administered and which binds that person to properly perform that person's duties under this rule, is sufficient."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(s), 88 Fed. Reg. 50619 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(s) R.C.M. 307(a) is amended to read as follows:

"(a) *In general.* In accordance with R.C.M. 307(b), preferral is the act by which a person subject to the UCMJ formally accuses another person subject to the UCMJ of an offense. Any person subject to the UCMJ may prefer charges."

Rule 308. Notification to accused of charges

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(t), 88 Fed. Reg. 50619 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(t) R.C.M. 308 is revised to read as follows:"Rule 308. Notification to accused of charges and required disclosures

(a) *Immediate commander.* The immediate commander of the accused shall cause the accused to be informed of the charges preferred against the accused, and the name of the person who preferred the charges and of any person who ordered the charges to be preferred, if known, as soon as practicable.

(b) *Commanders at higher echelons.* When the accused has not been informed of the charges, commanders at higher echelons to whom the preferred charges are forwarded shall cause the accused to be informed of the matters required under R.C.M. 308(a) as soon as practicable.

(c) *Disclosures generally.* Except as otherwise provided in R.C.M. 308(d) and as soon as practicable after notification to the accused of preferred charges, counsel for the Government shall provide the defense with copies of the charges and any books, papers, documents, data, photographs, or tangible objects that accompanied the charge or charges when preferred. If extraordinary circumstances make it impracticable to provide copies, counsel for the Government shall permit the defense to inspect these items.

(d) *Information not subject to disclosure.*

(1) *Military Rules of Evidence.* Nothing in this rule shall be construed to require the disclosure of information protected from disclosure by the Military Rules of Evidence.

(2) *Work Product.* Nothing in this rule shall require the disclosure or production of notes, memoranda, or similar working papers prepared by counsel or counsel's assistants and representatives.

(3) *Contraband*. If items covered by R.C.M. 308(c) are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the preliminary hearing.

(4) *Privilege.* If items covered by R.C.M. 308(c) are privileged, classified, or otherwise protected under Section V of Part III, the Military Rules of Evidence, no disclosure of those items is required under this rule. However, counsel for the Government may disclose privileged, classified, or otherwise protected information covered by R.C.M. 308(a) if authorized by the holder of the privilege or, in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(5) *Protective order if privileged information is disclosed.* If the Government agrees to disclose to the accused information to which the protections afforded by Section V of the Military Rules of Evidence may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)–(6) or 506(g)(2)–(5).

(e) *Remedy*. The sole remedy for violation of this rule is a continuance or recess of sufficient length to permit the accused to adequately prepare a defense, and no relief shall be granted upon a failure to comply with this rule unless the accused demonstrates that the accused has been hindered in the preparation of a defense."

Rule 309. Pre-referral judicial proceedings

The President promulgated the original version of this rule in the amendments made by Executive Order, 83 Fed. Reg. 9889 (Mar. 8, 2018).

Amendment of March 1, 2018

1. Source of the amendment: The President first promulgated this rule in the 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 309 is new and implements Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017), which establishes the matters that may be addressed by a military judge or military magistrate in a pre-referral proceeding.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(e), 88 Fed. Reg. 50544 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (e) R.C.M. 309 is amended to read as follows:
>
> "Rule 309. Proceedings conducted before referral
>
> (a) *In general*.
>
> (1) A military judge detailed under regulations of the Secretary concerned may conduct proceedings under Article 30a, before referral of charges and specifications to court-martial for trial, and may issue such rulings and orders as necessary to further the purpose of the proceedings. A military judge may issue such orders and rulings only when the matters would be subject to consideration by a military judge in a general or special court-martial.

(2) The matters that may be considered and ruled upon by a military judge in proceeding under this rule are limited to those matters specified in subsection (b) of this rule.

(3) If any matter in a proceeding under this rule becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter, to include any motions, related papers, and the record of the hearing, if any, shall be provided to the military judge detailed to the court-martial.

(b) *Pre-referral matters*.

(1) *Pre-referral investigative subpoenas*. A military judge may, upon application by the Government, consider whether to issue a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C). The proceeding may be conducted ex parte and may be conducted in camera.

(2) *Pre-referral warrants or orders for wire or electronic communications*. A military judge may, upon written application by a federal law enforcement officer or authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, consider whether to issue a warrant or order for wire or electronic communications and related information as provided under R.C.M. 703A. The proceeding may be conducted ex parte and may be conducted in camera.

(3) *Requests for relief from subpoena or other process*. A person in receipt of a prereferral investigative subpoena under R.C.M. 703(g)(3)(C), a victim named in a specification whose personal and confidential information has been subpoenaed under R.C.M. 703(g)(3)(C)(ii), or a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government.

(4) *Pre-referral matters referred by an appellate court*. When a Court of Criminal Appeals or the Court of Appeals for the Armed Forces, in the course of exercising the jurisdiction of such court, remands the case for a pre-referral judicial proceeding, a military judge may conduct such a proceeding under this rule. This includes matters referred by a Court of Criminal Appeals under subsection (e) of Article 6b.

(5) *Pre-referral matters under subsection (c) of Article 6b*. The military judge may designate a suitable person to assume the rights of a victim who is under 18 years of age (but who is not a member of the armed forces), or who is incompetent, incapacitated, or deceased. Upon appointment by the military judge, the legal guardian of the victim, the representative of the victim's estate, a family member, or any other person designated as suitable by the military judge, may assume the rights of the victim. Under no circumstances may the military judge designate the accused to assume the rights of the victim.

(6) *Pretrial confinement of an accused*. After action by the 7-day reviewing officer under R.C.M. 305(i)(2)(C), a military judge may, upon application of an accused for appropriate relief, review the propriety of pretrial confinement. A military judge may order release from pretrial confinement under the provisions ofR.C.M. 305G)(l).

(7) *The mental capacity or mental responsibility of an accused*.

(A) A military judge may, under the provisions of R.C.M. 706(b)(l), order an inquiry into the mental capacity or mental responsibility of an accused before referral of charges. The proceeding may be conducted ex parte and may be conducted in camera. (B) A military judge may, under the provisions ofR.C.M. 909, conduct a hearing to determine the mental capacity of the accused.

(8*) A request for individual military counsel*. When an accused requests individual military counsel prior to charges being referred to a general or special court-martial, a military judge may review the request subject to the provisions ofR.C.M. 506(b).

(9) *Victim's petition for relief*.

(A) A victim of an offense under the UCMJ, as defined in Article 6b(b), may file a motion pre-referral requesting that a military judge require a preliminary hearing officer conducting a preliminary hearing under R.C.M. 405 to comply with:

(i) Articles 6b or 32;

(ii) R.C.M. 405; or

(iii) Mil. R. Evid. 412, 513, 514, or 615.

(B) The military judge may grant or deny such a motion. The ruling is subject to further review pursuant to Article 6b(e).

(c) *Procedure for submissions*. The Secretary concerned shall prescribe the procedures for receiving requests for proceedings under this rule and for detailing military judges to such proceedings.

(d) *Hearings*. Any hearing conducted under this rule shall be conducted in accordance with the procedures generally applicable to sessions conducted under Article 39(a), and R.C.M. 803.

(e) *Record*. A separate record of any proceeding under this rule shall be prepared and forwarded to the convening authority or commander with authority to dispose of the charges or offenses in the case. If charges are referred to trial in the case, such record shall be included in the record of trial.

(f) *Military magistrate*. If authorized under regulations of the Secretary concerned, a military judge detailed to a proceeding under this rule, other than a proceeding under paragraph (b)(2), (b)(7)(B), or (b)(8) of this rule, may designate a military magistrate to preside and exercise the authority of the military judge over the proceeding."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(u)-(y), 88 Fed. Reg. 50621 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made

by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(u) R.C.M. 309(a)(2) is amended to read as follows:

"(2) The matters that may be considered and ruled upon by a military judge under this rule are limited to those matters specified in R.C.M. 309(b)."

(v) R.C.M. 309(b)(3) is amended to read as follows:

"(3) *Requests for relief from subpoena or other process.* A person in receipt of a prereferral investigative subpoena under R.C.M. 703(g)(3)(C), a victim named in a specification whose personal and confidential information has been subpoenaed under R.C.M. 703(g)(3)(C)(ii), a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A(a), or a person ordered to sit for a deposition under R.C.M. 702(b)(2) may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive, or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order, as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government."

(w) R.C.M. 309(b)(6) is amended to read as follows:

"(6) *Pretrial confinement of an accused.* After action by the 7-day reviewing officer under R.C.M. 305G)(2)(C), a military judge may, upon application of an accused for appropriate relief, review the propriety of pretrial confinement. A military judge may order release from pretrial confinement under the provisions of R.C.M. 305(k)(l)."

(x) A new R.C.M. 309(b)(10) is inserted immediately after (b)(9) to read as follows:

"(10) *Pre-referral depositions.* A military judge may, upon application by a party, consider whether to order a pre-referral deposition under R.C.M. 702(c)(2)."

(y) R.C.M. 309(e) is amended to read as follows:

"(e) *Record.* A separate record of any proceeding under this rule shall be prepared and forwarded to the convening authority, special trial counsel, or any combination thereof, with authority to dispose of the charges or offenses in the case. If charges are referred to trial in the case, such record shall be included in the record of trial."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(g), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(g) R.C.M. 309(b)(3) is amended to read as follows:

"(3) Requests for relief from subpoena or other process. A person in receipt of a pre referral investigative subpoena under R.C.M. 703(g)(3)(C), a victim whose personal or confidential information has been subpoenaed under 703(g)(3)(C)(ii), a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A(a), or a person ordered to sit for a deposition under R.C.M. 702(b)(2) may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive, or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order, as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government."

Rule 401. Forwarding and disposition of charges in general

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(z), 88 Fed. Reg. 50622 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(z) R.C.M. 401(a) is revised to read as follows:

"(a) *Who may dispose of charges.* Only persons authorized to convene courts-martial or to administer nonjudicial punishment under Article 15 may dispose of charges, except for those charges over which a special trial counsel has exercised authority and which must be disposed of in accordance with R.C.M. 401A. A superior competent authority may withhold the authority of a subordinate to dispose of charges in individual cases, types of cases, or generally."

Rule 401A. Disposition of charges over which a special trial counsel exercises authority and has not deferred

The President promulgated this rule in Executive Order No. 14103, Annex 2 § 2(l), 88 Fed. Reg. 50535, 50623 (Aug. 2, 2023). An edition of the M.C.M. containing the rule is forthcoming. The President has not amended the rule.

Rule 402. Action by commander not authorized to convene courts-martial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(bb), 88 Fed. Reg. 50624 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(bb) R.C.M. 402 is amended to read as follows:

"Rule 402. Action by commander not authorized to convene courts-martial

Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander

authorized to administer nonjudicial punishment but not authorized to convene courts-martial may:

(1) Dismiss any charge; or

(2) Forward any charge to a superior commander for disposition."

Rule 403. Action by commander exercising summary court-martial jurisdiction

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2.

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

(f) R.C.M. 403(b)(5) is amended to read as follows:

"(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R. C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 403(b)(4) is amended and implements Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction for certain sex-related offenses to general courts-martial.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(cc), 88 Fed. Reg. 50624 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (cc) R.C.M. 403 is amended to read as follows: "Rule 403. Action by commander exercising summary court-martial jurisdiction.
>
> (a) *Recording receipt.* Immediately upon receipt of sworn charges, an officer exercising summary court-martial jurisdiction over the command shall cause the hour and date ofreceipt to be entered on the charge sheet. After recording receipt of charges over which a special trial counsel has exercised authority and has not deferred, the charge sheet shall be returned to the special trial counsel.
>
> (b) *Disposition.* Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander exercising summary court-martial jurisdiction may:
>
> (1) Dismiss any charge;
>
> (2) Forward any charge (or, after dismissing a charge, the matter) to a subordinate
>
> commander for disposition;
>
> (3) Forward any charge to a superior commander for disposition;
>
> (4) Subject to R.C.M. 601(d) and 1301(c), refer any charge to a summary court-martial for trial; or
>
> (5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition."

Rule 404. Action by Commander exercising special court-martial jurisdiction

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(i), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(i) R.C.M. 404(e) is amended to read as follows:

"(e) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 404(4) and the accompanying Discussion are amended and reflect Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction for certain sex-related offenses to general courts-martial.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(dd), 88 Fed. Reg. 50625 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National

Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(dd) R.C.M. 404 is amended to read as follows:

"Rule 404. Action by commander exercising special court-martial jurisdiction

Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander exercising special court-martial jurisdiction may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing a charge, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 201(t)(2)(D) and (E), 60l(d), and 1301(c), refer any charge to a summary court-martial or to a special court-martial for trial; or

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition."

Rule 404A. Disclosure of matters following direction of preliminary hearing

The President promulgated the original version of this rule in the amendments made by Executive No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015), described below:

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(j), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(j) A new rule, R.C.M. 404A, is inserted immediately after R.C.M. 404(e) and reads as follows:

"Rule 404A. Disclosure of matters following direction of preliminary hearing

(a) When a convening authority directs a preliminary hearing under R.C.M. 405, counsel for the government shall, subject to subsections (b) through (d) of this rule, within 5 days of issuance of the Article 32 appointing order, provide to the defense the following information or matters:

(1) Charge sheet;

(2) Article 32 appointing order;

(3) Documents accompanying the charge sheet on which the preferral decision was based;

(4) Documents provided to the convening authority when deciding to direct the preliminary hearing;

(5) Documents the counsel for the government intends to present at the preliminary hearing; and

(6) Access to tangible objects counsel for the government intends to present at the preliminary hearing.

(b) Contraband. If items covered by subsection (a) of this rule are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the hearing.

(c) Privilege. If items covered by subsection (a) of this rule are privileged, classified or otherwise protected under Section V of Part III, no disclosure of those items is required under this rule. However, counsel for the government may disclose privileged, classified, or otherwise protected information covered by subsection (a) of this rule if authorized by the holder of the privilege, or in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(d) Protective order if privileged information is disclosed. If the government agrees to disclose to the accused information to which the protections afforded by Section V of Part III may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)-(6) or 506(g)(2)-(5)."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> The rule is renamed "Initial disclosures."
>
> R.C.M. 404A(a) is amended and establishes the Government's disclosure requirements at preferral of charges and at the direction of a preliminary hearing.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ee), 88 Fed. Reg. 50626 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (ee) R.C.M. 404A is deleted.

Rule 405. Preliminary hearing

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, §§ 1(a)-(b), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: July 6, 1991. *See id.* at §§ 4, 4(g), 4(i) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendments:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 405(g)(1)(A) is amended to read as follows:

"(A) Witnesses. Except as provided in subsection (g)(4)(A) of this rule, any witness whose testimony would be relevant to the investigation and not cumulative shall be produced if reasonably available. This includes witnesses requested by the accused, if the request is timely. A witness is 'reasonably available' when the witness is located within 100 miles of the situs of the investigation and the significance of the testimony and personal appearance of the witness outweighs the difficulty, expense, delay, and effect on military operations of obtaining the witness' appearance. A witness who is unavailable under Mil. R. Evid. 804(a)(1)-(6) is not 'reasonably available.' "

b. R.C.M. 405(g)(4)(B) is amended—

(1) in clause (iii) to read as follows:

"(iii) Prior testimony under oath;";

(2) in clause (iv) to read as follows:

"(iv) Depositions of that witness; and"; and

(3) by adding the following clause at the end thereof:

"(v) In time of war, unsworn statements.".

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(e), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only in cases in which charges are preferred on or after January 21, 1994." *Id.* § 4(c).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

e. R.C.M. 405(i) is amended to read as follows:

"(i) *Military Rules of Evidence.* The Military Rules of Evidence—other than Mil. R. Evid. 301, 302, 303, 305, 412, and Section V—shall not apply in pretrial investigations under this rule.".

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 1(a)-(b), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 405(g)(1)(B) is amended to read as follows:

"(B) Evidence. Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is under the control of the Government and which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely. As soon as practicable after receipt of a request by the accused for information which may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under sub-section (g)(6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence. ".

b. R.C.M. 405(g) is amended by inserting the following new subparagraph(6) at the end thereof:

"(6) Protective order for release of privileged information. If, prior to referral, the Government agrees to disclose to the accused information to which the protections afforded by Mil. R. Evid. 505 or Mil. R. Evid. 506 may apply, the convening authority, or other person designated by regulations of the Secretary of the service concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified in Mil. R. Evid. 505(g)(1)(B) through (F) or Mil. R. Evid. 506(g)(2) through (5).".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(b), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

b. R.C.M. 405(g)(1)(A) is amended to read as follows:

"(e) Scope of investigation. The investigating officer shall inquire into the truth and form of the charges, and such other matters as may be necessary to make a recommendation as to the disposition of the charges. If evidence adduced during the investigation indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of such offense and make a recommendation as to its disposition, without the accused first having been charged with the offense. The accused's rights under subsection (f) are the same with regard to investigation of both charged and uncharged offenses."

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex § 1(b), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) R.C.M. 405(h)(3) is amended to read as follows:

"(3) Access by spectators. Access by spectators to all or part of the proceedings may be restricted or foreclosed in the discretion of the commander who directed the investigation or the investigating officer. Article 32 investigations are public hearings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open investigation, the hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Commanders or investigating officers must conclude that no lesser methods short of closing the Article 32 investigation can be used to protect the overriding interest in the case. Commanders or investigating officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a commander or investigating officer believes closing the Article 32 investigation is necessary, the commander or investigating officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the Article 32 investigating officer's report. Examples of overriding interests may include: preventing

psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting."

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex §§ 1(a)-(f), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 405 as it was amended on June 13, 2014 and before its subsequent amendment. The version of R.C.M. 405 in M.C.M. (2016 ed.) reflects the amendments of June 13, 2014 and June 17, 2015.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 405(f)(10) is amended to read as follows:

"(10) Have evidence, including documents or physical evidence, produced as provided under subsection (g) of this rule;".

(b) R.C.M. 405(g)(1)(B) is amended to read as follows:

"(B) Evidence. Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely and in compliance with this rule. As soon as practicable after receipt of a request by the accused for information that may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under subsection (g)(6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence."

(c) R.C.M. 405(g)(2)(C) is amended to read as follows:

"(C) Evidence generally. The investigating officer shall make an initial determination whether evidence is reasonably available. If the investigating officer decides that it is not reasonably available, the investigating officer shall inform the parties."

(d) R.C.M. 405(g)(2)(C)(i) is inserted to read as follows:

"(i) Evidence under the control of the Government. Upon the investigating officer's determination that evidence is reasonably available, the custodian of the evidence shall be requested to provide the evidence. A determination by the custodian that the evidence is not reasonably available is not subject to appeal by the accused, but may be reviewed by the military judge under R.C.M. 906(b)(3)."

(e) R.C.M. 405(g)(2)(C)(ii) is inserted to read as follows:

"(ii) Evidence not under the control of the Government. Evidence not under the control of the Government may be obtained through noncompulsory means or by subpoena duces tecum issued pursuant to procedures set forth in R.C.M. 703(f)(4)(B). A determination by the investigating officer that the evidence is not reasonably available is not subject to appeal by the accused, but may be reviewed by the military judge under R.C.M. 906(b)(3).

(f) R.C.M. 405(i) is amended to read as follows:

"(i) Military Rules of Evidence. The Military Rules of Evidence do not apply in pretrial investigations under this rule except as follows:

(1) Military Rules of Evidence 301, 302, 303, 305, and Section V shall apply in their entirety.

(2) Military Rule of Evidence 412 shall apply in any case defined as a sexual offense in Mil. R. Evid. 412(d).

(3) In applying these rules to a pretrial investigation, the term "military judge," as used in these rules, shall mean the investigating officer, who shall assume the military judge's powers to exclude evidence from the pretrial investigation, and who shall, in discharging this duty, follow the procedures set forth in the rules cited in paragraphs (1) and (2)."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(k), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment: The amendment completely replaced the prior version of R.C.M. 405. The full text of this rule appears in M.C.M. (2016 ed.). Becaue it is several pages long, it is not reprinted here.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 405 and the accompanying Discussions are amended and reflect Articles 6b, 30a, 32, 33, 46, and 47, as amended or added by Sections 5105, 5202, 5203, 5204, and 5229 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 6b is further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 15591, 131 Stat. 1283 (2017). Article 30a is amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(f)-(j), 88 Fed. Reg. 50547 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(f) R.C.M. 405(f) is amended to read as follows:

"(f) *Rights of the accused*. At any preliminary hearing under this rule, the accused shall have the right to:

(1) Be advised of the charges under consideration;

(2) Be represented by counsel;

(3) Be informed of the purpose of the preliminary hearing;

(4) Be informed of the right against self-incrimination under Article 31;

(5) In accordance with the terms of R.C.M. 4050)(4), be present throughout the preliminary hearing;

(6) Cross-examine witnesses on matters relevant to the issues for determination under subsection (a) of this rule;

(7) Present matters relevant to the issues for determination under subsection (a); and

(8) Make a sworn or unswom statement relevant to the issues for determination under subsection (a)."

(g) R.C.M. 405(h)(3)(B)(iii) is amended to read as follows:

"(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) of this rule and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense-requested

evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under subsection (1) of this rule."

(h) R.C.M. 405(i)(2)(A) is amended to read as follows:

"(A) *Inadmissibility of certain evidence*. In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that the alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim's sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(l) or (2); and

(ii) the evidence is not cumulative and is necessary to a determination of the issues under subsection (a) of this rule."

(i) R.C.M. 405(j)(3) is amended to read as follows:

"(3) *Access by spectators*. Preliminary hearings are public proceedings and should remain open to the public whenever possible, whether conducted in person or via remote means. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report."

(j) R.C.M. 405(j)(4) is amended to read as follows:

"(4) *Presence of accused*. The accused shall be present for the preliminary hearing.

(A) *Remote presence of the accused*. The convening authority that directed the preliminary hearing may authorize the use of audio-visual technology between the parties and the preliminary hearing officer. In such circumstances the "presence" requirement of the accused is met only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused shall be considered to have waived the right to be present at the preliminary hearing if the accused:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify exclusion from the proceeding."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ff), 88 Fed. Reg. 50626 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(ff) R.C.M. 405 is amended to read as follows:

"Rule 405. Preliminary hearing.

(a) *In general.* Except as provided in R.C.M. 405(n), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and to recommend the disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court-martial.

(b) *Earlier preliminary hearing.* If a preliminary hearing on the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the preliminary hearing and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further preliminary hearing is required.

(c) *Who may direct a preliminary hearing.*

(1) Subject to R.C.M. 405(c)(2), unless prohibited by regulations of the Secretary concerned, a preliminary hearing may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent with these rules.

(2) For charges and specifications over which a special trial counsel has exercised authority, the special trial counsel shall determine whether a preliminary hearing is required. If a special trial counsel determines that a hearing is required, the special trial counsel shall request that a convening authority provide a preliminary hearing officer. Upon such a request, the convening authority shall provide a preliminary hearing officer and direct a preliminary hearing in accordance with this rule. If a special trial counsel

determines a previous preliminary hearing is required to be reopened, the convening authority shall direct the preliminary hearing to be reopened.

(d) *Disclosures after direction of a preliminary hearing.*

(1) As soon as practicable but no later than five days after direction of an Article 32 preliminary hearing, counsel for the Government shall provide the defense with copies of, or, if impracticable, permit the defense to inspect:

(A) the order directing the Article 32 preliminary hearing pursuant to this rule (R.C.M. 405);

(B) statements, within the control of military authorities, of witnesses that counsel for the Government intends to call at the preliminary hearing;

(C) evidence counsel for the Government intends to present at the preliminary hearing; and

(D) any matters provided to the convening authority when deciding to direct the preliminary hearing.

(2) *Contraband.* If items covered by R.C.M. 405(d)(l) are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the preliminary hearing.

(3) *Privilege.* If items covered by R.C.M. 405(d)(l) are privileged, classified, or otherwise protected under Section V of Part III, the Military Rules of Evidence, no disclosure of those items is required under this rule. However, counsel for the Government may disclose privileged, classified, or otherwise protected information covered by R.C.M. 405(d)(l) if authorized by the holder of the privilege, or, in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(4) *Protective order if privileged ieformation is disclosed.* If the Government agrees to disclose to the accused information to which the protections afforded by Section V of Part III may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)-(6) or 506(g)(2)-(5).

(e) *Personnel.*

(1) Preliminary hearing officer.

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(B) Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(C) The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(D) The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity.

(2) *Counsel for the Government.*

(A) Subject to R.C.M. 405(e)(2)(B), a judge advocate, not the accuser, shall serve as counsel to represent the Government.

(B) For preliminary hearings requested by a special trial counsel, the special trial counsel shall detail counsel for the Government consistent with regulations prescribed by the Secretary concerned. Any determination by a special trial counsel to prefer or refer charges shall not act to disqualify that special trial counsel as an accuser.

(3) *Defense counsel.*

(A) *Detailed counsel.* Military counsel certified in accordance with Article 27(b) shall be detailed to represent the accused.

(B) *Individual military counsel.* The accused may request to be represented by individual military counsel. Such requests shall be acted on in accordance with R.C.M. 506(b).

(C) *Civilian counsel.* The accused may be represented by civilian counsel at no expense to the Government. Upon request, the accused is entitled to a reasonable time to obtain civilian counsel and to have such counsel present for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for this purpose. Representation by civilian counsel shall not limit the rights to military counsel under R.C.M. 405(e)(3)(A) or (B).

(4) *Others.* The convening authority who directed the preliminary hearing may also detail or request an appropriate authority to detail a reporter, an interpreter, or both.

(f) *Scope of preliminary hearing.*

(1) The preliminary hearing officer shall limit the inquiry to the examination of evidence, including witnesses, relevant to the issues for determination under R.C.M. 405(a).

(2) If evidence adduced during the preliminary hearing indicates that the accused committed any uncharged offense, the preliminary hearing officer may examine evidence and hear witnesses presented by the parties relating to the subject matter of such offense and make the determination specified in R.C.M. 405(a) regarding such offense without the accused first having been charged with the offense. The rights of the accused under R.C.M. 405(g), and, where it would not cause undue delay to the proceedings, the procedure applicable for production of witnesses and other evidence under R.C.M. 405(i), are the same with regard to both charged and uncharged offenses. When considering uncharged offenses identified during the preliminary hearing, the preliminary hearing officers shall inform the accused of the general nature of each offense considered and otherwise afford

the accused the same opportunity for representation, cross-examination, and presentation afforded during the preliminary hearing of any charged offense.

(3) If evidence adduced during the preliminary hearing indicates that the accused committed any uncharged covered offense and the preliminary hearing was not requested by special trial counsel, the preliminary hearing officer shall provide prompt notice to the convening authority and a special trial counsel and shall submit a copy of the preliminary hearing report to a special trial counsel.

(g) *Rights of the accused*. At any preliminary hearing under this rule the accused shall have the right to:

(1) Be advised of the charges and uncharged misconduct under consideration;

(2) Be represented by counsel;

(3) Be informed of the purpose of the preliminary hearing;

(4) Be informed of the right against self-incrimination under Article 31 ;

(5) In accordance with the terms of R.C.M. 405(k)(4), be present throughout the taking of evidence;

(6) Cross-examine witnesses on matters relevant to the issues for determination under R.C.M. 405(a);

(7) Present matters relevant to the issues for determination under R.C.M. 405(a); and

(8) Make a sworn or unswom statement relevant to the issues for determination under R.C.M. 405(a).

(h) *Notice to and presence of victim.*

(1) For the purposes of this rule, a "victim" is an individual who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.

(2) A victim of an offense under the UCMJ or the victim’s counsel, if any, shall receive reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense and a reasonable opportunity to confer with counsel for the Government.

(3) A victim has the right not to be excluded from any public proceeding of the preliminary hearing, except to the extent a similarly situated victim would be excluded at trial.

(i) *Notice, Production of Witnesses, and Production of Other Evidence.*

(1) *Notice.* Prior to any preliminary hearing under this rule, the parties shall, in accordance with timelines set by the preliminary hearing officer, provide to the preliminary hearing officer and the opposing party the following notices:

(A) Notice of the name and contact information for each witness the party intends to call at the preliminary hearing;

(B) Notice of any other evidence that the party intends to offer at the preliminary hearing; and 405(1).

(C) Notice of any additional information the party intends to submit under R.C.M.

(2) *Production of Witnesses.*

(A) *Military Witnesses.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government the names of proposed military witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the time line established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available, and if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final.

(iv) A victim who is alleged to have suffered a direct physical, emotional,or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing.

(B) *Civilian Witnesses.*

(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness' testimony is relevant, not cumulative, and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for the witness's testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony.

(3) *Production of other evidence.*

(A) *Evidence under the control of the Government.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence under the control of the Government the accused requests the Government produce to the defense for introduction at the preliminary hearing. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and shall make reasonable efforts to obtain the evidence; or (2) the Government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). If the

preliminary hearing officer determines that the evidence shall be produced, counsel for the Government shall make reasonable efforts to obtain the evidence.

(iii) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

(B) *Evidence not under the control of the Government.*

(i) Evidence not under the control of the Government may be obtained through noncompulsory means or by a pre-referral investigative subpoena issued by a military judge under R.C.M. 309 or counsel for the Government in accordance with the process established by R.C.M. 703(g)(3)(C).

(ii) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence not under the control of the Government that the accused requests the Government obtain. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either

(1) the Government agrees that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and shall issue a pre-referral investigative subpoena for the evidence; or (2) the Government objects to the production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a prereferral investigative subpoena for the defense-requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under R.C.M. 405(m).

(iv) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

(j) *Military Rules of Evidence.*

(1) *In general.*

(A) Only the following Military Rules of Evidence apply to preliminary hearings:

(i) Mil. R. Evid. 301-303 and 305.

(ii) Mil. R. Evid. 412(a), except as provided in R.C.M. 4050)(2).

(iii) Mil. R. Evid., Section V, Privileges, except that Mil. R. Evid. 505(f)(h) and (j); 506(f)-(h), (j), (k), and (m); and 514(d)(6) shall not apply.

(B) In applying the rules to a preliminary hearing in accordance with R.C.M. 405(j)(l)(A), the term "military judge," as used in such rules, means the preliminary hearing officer, who shall assume the military judge's authority to exclude evidence from the preliminary hearing, and who shall, in discharging this duty, follow the procedures set forth in such rules. Evidence offered in violation of the procedural requirements of the rules in R.C.M. 405(j)(l)(A) shall be excluded from the preliminary hearing, unless good cause is shown.

(2) *Sex-offense cases.*

(A) *Inadmissibility of certain evidence.* In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that any alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim's sexual predisposition is not admissible at a preliminary hearing unless-

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(l) or (2); and

(ii) the evidence is relevant, not cumulative, and is necessary to a determination of the issues under R.C.M. 405(a).

(B) *Initial procedure to determine admissibility.* A party intending to offer evidence under R.C.M. 405(j)(2)(A) shall, no later than five days before the preliminary hearing begins, submit a written motion specifically describing the evidence and stating why the evidence is admissible. The preliminary hearing officer may permit a different filing time, but any motion shall be filed prior to the beginning of the preliminary hearing. The moving party shall serve the motion on the opposing party, who shall have the opportunity to respond in writing. Counsel for the Government shall cause the motion and any written responses to be served on the victim, or victim's counsel, if any, or, when appropriate, the victim's guardian or representative. After reviewing the motion and any written responses, the preliminary hearing officer shall either—

(i) deny the motion on the grounds that the evidence does not meet the criteria specified in R.C.M. 405G)(2)(A)(i) or (ii); or

(ii) conduct a hearing to determine the admissibility of the evidence.

(C) *Admissibility hearing.* If the preliminary hearing officer conducts a hearing to determine the admissibility of the evidence, the admissibility hearing shall be closed and should ordinarily be conducted at the end of the preliminary hearing, after all other evidence offered by the parties has been admitted. At the admissibility hearing, the parties may call witnesses and offer relevant evidence. The victim shall be afforded a reasonable opportunity to attend and be heard, to include being heard through counsel. If the preliminary hearing officer determines that the evidence should be admitted, the victim may directly petition the Court of Criminal Appeals for a writ of mandamus pursuant to Article 6b.

(D) *Sealing.* The motions, related papers, and the record of an admissibility hearing shall be sealed and remain under seal in accordance with R.C.M. 1113.

(k) *Preliminary hearing procedure.*

(1) *Generally.* The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused's rights under R.C.M. 405(g). Counsel for the Government will then present evidence. Upon the conclusion of counsel for the Government's presentation of evidence, defense counsel may present matters. Both counsel for the Government and defense counsel shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is necessary for a determination of the issues under R.C.M. 405(a), the preliminary hearing officer may provide the parties an opportunity to present additional testimony or evidence. Except as provided in R.C.M. 405(m)(2)(J), the preliminary hearing officer shall not consider evidence not presented at the preliminary hearing in making the determination under R.C.M. 405(a). The preliminary hearing officer shall not call witnesses *sua sponte.*

(2) *Presentation of evidence.*

(A) *Testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the accused may make an unsworn statement. The preliminary hearing officer shall only consider testimony that is relevant to the issues for determination under R.C.M. 405(a).

(B) *Other evidence.* If relevant to the issues for determination under R.C.M. 405(a) and not cumulative, a preliminary hearing officer may consider other evidence offered by either counsel for the Government or defense counsel, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, that the preliminary hearing officer determines is reliable. This other evidence need not be sworn.

(3) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible, whether conducted in person or via remote means. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report.

(4) *Presence of accused* The accused shall be present for the preliminary hearing.

(A) *Remote presence of the accused.* The convening authority that directed the preliminary hearing may authorize the use of audio-visual technology between the parties and the preliminary hearing officer. In such circumstances, the "presence" requirement of the accused is met only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused shall be considered to have waived the right to be present at the preliminary hearing if the accused:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct which is such as to justify exclusion from the proceeding.

(5) *Recording of the preliminary hearing.* Counsel for the Government shall ensure that the preliminary hearing is recorded by a suitable recording device. A victim named in a specification under consideration may request access to, or a copy of, the recording of the proceedings. Upon request, counsel for the Government shall provide the requested access to, or a copy of, the recording or, at the Government's discretion, a transcript, to the victim or victim's counsel, if any, not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of rereferral, or court-martial adjournment. This rule does not entitle the victim to classified information or sealed materials consistent with an order issued in accordance with R.C.M. 1113(a).

(6) *Recording and broadcasting prohibited*. Video and audio recording, broadcasting, and the taking of photographs-except as required in R.C.M. 405(k)(5)-are prohibited. The convening authority may, as a matter of discretion, permit contemporaneous closed-caption

video or audio transmission to permit viewing or hearing by an accused removed under R.C.M. 405(k)(4) or by spectators when the facilities are inadequate to accommodate a reasonable number of spectators.

(7) *Objections.* Any objection alleging a failure to comply with this rule, other than an objection under R.C.M. 405(m), shall be made to the preliminary hearing officer promptly upon discovery of the alleged error. The preliminary hearing officer is not required to rule on any objection. An objection shall be noted in the preliminary hearing report if the person objecting so requests. The preliminary hearing officer may require a party to file any objection in writing.

(8) *Sealed exhibits and proceedings.* The preliminary hearing officer has the authority to order exhibits, recordings of proceedings, or other matters sealed as described in R.C.M. 1113.

(l) *Supplementary information.*

(1) No later than 24 hours from the closure of the preliminary hearing, counsel for the Government, defense counsel, and any victim named in a specification under consideration (or, if applicable, counsel for such a victim) may submit to the preliminary hearing officer, counsel for the Government, and defense counsel additional information that the submitter deems relevant to the disposition of the charges and specifications.

(2) Defense counsel may submit additional matters that rebut the submissions of counsel for the Government or any victim provided under R.C.M. 405(1)(1). Such matters must be provided to the preliminary hearing officer and to the counsel for the Government within 5 days of the closure of the preliminary hearing.

(3) The preliminary hearing officer shall examine all supplementary information submitted under R.C.M. 405(1) and shall seal, in accordance with R.C.M. 1113, any matters the preliminary hearing officer deems privileged or otherwise not subject to disclosure.

(A) The preliminary hearing officer shall provide a written summary and an analysis of the supplementary information submitted under R.C.M. 405(1) that is not sealed and is relevant to disposition for inclusion in the report to the convening authority or special trial counsel, as applicable, under R.C.M. 405(m).

(B) If the preliminary hearing officer seals any supplementary information submitted under R.C.M. 405(1), the preliminary hearing officer shall provide an analysis of those materials. The analysis of the sealed materials shall be sealed. Additionally, the preliminary hearing officer shall generally describe those matters and detail the basis for sealing them in a separate cover sheet. This cover sheet shall accompany the sealed matters and shall not contain privileged information or be sealed.

(4) The supplementary information and any summary and analysis provided by the preliminary hearing officer, and any sealed matters and cover sheets, as applicable, shall be forwarded to the convening authority or special trial counsel, as applicable, for consideration in making a disposition determination.

(5) Submissions under R.C.M. 405(1) shall be maintained as an attachment to the preliminary hearing report provided under R.C.M. 405(m).

(m) *Preliminary hearing report.*

(1) *In general.* The preliminary hearing officer shall make a timely written report of the preliminary hearing to the convening authority or, for hearings requested by a special trial counsel, to the special trial counsel. This report is advisory and does not bind the staff judge advocate, convening authority, or special trial counsel, as applicable.

(2) *Contents.* The preliminary hearing report shall include:

(A) A statement of names and organizations or addresses of counsel for the Government and defense counsel and, if applicable, a statement of why either counsel was not present at any time during the proceedings;

(B) The recording of the preliminary hearing under R.C.M. 405(k)(5);

(C) For each specification, the preliminary hearing officer's reasoning and conclusions with respect to the issues for determination under R.C.M. 405(a), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(D) If applicable, a statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the Government refused to issue a pre-referral investigative subpoena that was directed by the preliminary hearing officer and the counsel's statement of the reasons for such refusal;

(G) Recommendations for any necessary modifications to the form of the charges and specifications;

(H) A statement of whether the preliminary hearing officer examined evidence or heard witnesses relating to any uncharged offenses in accordance with R.C.M. 405(f)(2), and, for each such offense, the preliminary hearing officer's reasoning and conclusions as to whether there is probable cause to believe that the accused committed the offense and whether the convening authority would have court-martial jurisdiction over the offense if it were charged;

(I) A notation of any objections if required under R.C.M. 405(k)(7);

(J) The recommendation of the preliminary hearing officer as to the disposition that should be made of the charges and specifications in the interest of justice and discipline. In making this disposition recommendation, the preliminary hearing officer may consider any evidence admitted during the preliminary hearing and matters submitted under R.C.M. 405(1);

(K) The written summary and analysis required by R.C.M. 405(1)(3)(A); and

(L) A notation as to whether the parties or the preliminary hearing officer considered any offense to be a covered offense.

(3) *Sealed exhibits and proceedings.* If the preliminary hearing report contains exhibits, proceedings, or other matters ordered sealed by the preliminary hearing officer in accordance with R.C.M. 1113, counsel for the Government shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure.

(4) *Distribution of preliminary hearing report.* The preliminary hearing officer shall promptly cause the preliminary hearing report to be delivered to the convening authority or, for hearings requested by a special trial counsel, to the special trial counsel. Counsel for the Government shall promptly cause a copy of the report to be delivered to each accused. The convening authority or, for hearings requested by a special trial counsel, the special trial counsel shall promptly determine what disposition will be made in the interest of justice and discipline in accordance with R.C.M. 401 or R.C.M. 401A.

(5) *Objections to the preliminary hearing officer's report.* Upon receipt of the report, the parties shall have five days to submit objections to the preliminary hearing officer. Any objection to the preliminary hearing report shall be made to the convening authority who directed the preliminary hearing, via the preliminary hearing officer. The objection shall be served upon the opposing party, and government counsel must provide notice of the objection to any named victim or named victim's counsel, if any. The preliminary hearing officer will forward the objections to the convening authority as soon as practicable. The convening authority may direct that the preliminary hearing be reopened or take other action, as appropriate. For cases where a special trial counsel has exercised authority, the special trial counsel may request the convening authority reopen the preliminary hearing. Upon such request, the convening authority shall reopen the preliminary hearing. This paragraph does not prohibit a convening authority or special trial counsel from taking other action prior to the expiration of five days allotted for submitting objections. Failure to make a timely objection under this rule shall constitute waiver of the objection.

(n) *Waiver.* The accused may waive a preliminary hearing. However, the preliminary hearing may still be conducted notwithstanding the waiver. Relief from the waiver may be granted by the convening authority, a superior convening authority, or the military judge, as appropriate, for good cause shown. For offenses over which a special trial counsel has exercised authority, a special trial counsel may grant relief from the waiver. If a special trial counsel declines to grant relief from the waiver and the case is referred, the accused may request relief from the military judge."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(h)-(q), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(h) R.C.M. 405(a) is amended to read as follows:

"(a) In general. Except as provided in R.C.M. 405(n), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in

substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and the appropriate disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court martial. The preliminary hearing enables the impartial assessment of the case so that the preliminary hearing report can meaningfully inform a disposition determination."

(i) R.C.M. 405(e)(1) is amended to read as follows:

"(1) Preliminary hearing officer.

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. The Judge Advocate General of the armed force of which the officer is a member, or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps, shall certify the judge advocate as having the requisite training and experience to serve as the preliminary hearing officer, in accordance with regulations prescribed by the Secretary concerned.

(B) When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(C) Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(D) The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(E) The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity."

(j) R.C.M. 405(i)(2)(A) is amended to read as follows:

"(A) Military Witnesses.

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government the names of proposed military witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness's testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness's testimony for the hearing;

or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). The defense has the burden of establishing that the witness is relevant, not cumulative, and necessary by a preponderance of the evidence.

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available and, if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final. If the military witness is unavailable as determined by this rule, the preliminary hearing officer may require an affidavit or other sufficiently reliable evidence unless it would unreasonably delay the proceedings or interfere with operational necessity or mission requirements. If the commanding officer determines that the witness is unavailable, the counsel for the Government shall obtain a written explanation from the commanding officer detailing the circumstances and rationale for the determination.

(iv) A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing."

(k) R.C.M. 405(i)(2)(B) is amended to read as follows:

"(B) Civilian Witnesses.

(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness's testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness's testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). The

defense has the burden of establishing that the witness is relevant, not cumulative, and necessary by a preponderance of the evidence.

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness's testimony is relevant, not cumulative, and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for the witness's testimony. A civilian witness cannot be compelled to provide testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony."

(l) R.C.M. 405(i)(3)(A)(ii) is amended to read as follows:

"(ii) If the Government objects to the production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). If the preliminary hearing officer determines that the evidence shall be produced, counsel for the Government shall make reasonable efforts to obtain the evidence. If such evidence is not reasonably available, the Government will include a written explanation documenting the unavailability of the evidence or efforts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m)."

(m) R.C.M. 405(i)(3)(B)(iii) is amended to read as follows:

"(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The defense has the burden of establishing that the evidence is relevant, not cumulative, and necessary by a preponderance of the evidence. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under R.C.M. 405(m)."

(n) R.C.M. 405(k)(1) is amended to read as follows:

"(1) Generally. The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused's rights under R.C.M. 405(g). Counsel for the Government will then present evidence. Upon the conclusion of counsel for the Government's presentation of evidence, defense counsel may present matters. Both counsel for the Government and defense counsel shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence

is relevant, not cumulative, and necessary for a determination of the issues under R.C.M. 405(a), the counsel for the Government shall produce such evidence in accordance with R.C.M. 405(i) unless it is not reasonably available. In such a case, the Government will provide a written explanation documenting unavailability or efforts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m). Except as provided in R.C.M. 405(m)(2)(J), the preliminary hearing officer shall not consider evidence not presented at the preliminary hearing in making the determination under R.C.M. 405(a). The preliminary hearing officer shall not call witnesses seta sponte."

(o) R.C.M. 405(k)(2)(B) is amended to read as follows:

"(B) Other evidence. If relevant to the issues for determination under R.C.M. 405(a), a preliminary hearing officer may consider other evidence offered by either counsel for the Government or defense counsel, including statements, tangible evidence, or reproductions thereof, that the preliminary hearing officer determines is reliable. Written statements need not be sworn."

(p) The first sentence of R.C.M. 405(k)(4) is amended to read as follows:

"The accused shall be present for the preliminary hearing, except as otherwise noted in R.C.M. 405(k)(4)(B)."

(q) R.C.M. 405(m)(2) is amended to read as follows:

"(2) Contents. The preliminary hearing report is an impartial analysis of the case that meaningfully informs the referral authority when making an initial disposition determination and shall include:

(A) A statement of names and organizations or addresses of counsel for the Government and defense counsel and, if applicable, a statement of why either counsel was not present at any time during the proceedings;

(B) The recording of the preliminary hearing under R.C.M. 405(k)(5);

(C) For each specification, the preliminary hearing officer's reasoning and conclusions with respect to the issues for determination under R.C.M. 405(a), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(D) If applicable, a statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the Government refused to issue a pre-referral investigative subpoena that was directed by the preliminary hearing officer and the counsel's statement of the reasons for such refusal;

(G) Recommendations for any necessary modifications to the form of the charges and specifications;

(H) A statement of whether the preliminary hearing officer examined evidence or heard witnesses relating to any uncharged offenses in accordance with R.C.M. 405(0(2), and, for each such offense, the preliminary hearing officer's reasoning and conclusions as to

whether there is probable cause to believe that the accused committed the offense and whether the convening authority would have court-martial jurisdiction over the offense if it were charged;

(I) A notation of any objections if required under R.C.M. 405(k)(7);

(J) The recommendation and supporting analysis of the preliminary hearing officer as to the disposition that should be made of the charges and specifications in the interest of justice and discipline. In making this disposition recommendation, the preliminary hearing officer shall consider:

(i) any evidence admitted during the preliminary hearing;

(ii) matters submitted under R.C.M. 405(1);

(iii) the credibility and weight of the evidence; and

(iv) whether there is probably sufficient admissible evidence to obtain and sustain a conviction at trial.

(K) The written summary and analysis required by R.C.M. 405(1)(3)(A); and

(L) A notation as to whether the parties or the preliminary hearing officer considered any offense to be a covered offense."

Rule 406. Pretrial advice

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(zz), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(zz) R.C.M. 406(b)(2) and R.C.M. 1103 are amended by changing "report of investigation" to "report of preliminary hearing".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 406(a) and (b) and the accompanying Discussions are amended and reflect Article 34, as amended by Section 5205 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial and also prohibits a convening authority from referring charge(s) and specification(s) to a general court-martial unless a staff judge advocate provides written advice stating that the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charges, and a court-martial would have jurisdiction over the accused and the offense. Prior to referring charge(s) and specification(s) to a general court-martial, the staff judge advocate is also required to provide a recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline. *See also* R.C.M. 601(d).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(k), 88 Fed. Reg. 50550 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (k) A new R.C.M. 406(c) is inserted immediately after R.C.M. 406(b) to read as follows:
>
> "(c) *Distribution*. A copy of the advice of the staff judge advocate shall be provided to the defense if charges are referred to trial by general court-martial."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(gg), 88 Fed. Reg. 50646 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(gg) R.C.M. 406 is amended to read as follows:

"Rule 406. Pretrial advice and special trial counsel determinations

(a) *Pretrial Advice by the Staff Judge Advocate.*

(1) *General court-martial.* Except as provided by R.C.M. 406(b), before any charge may be referred for trial by a general court-martial, it shall be submitted to the staff judge advocate of the convening authority for consideration and advice. The advice of the staff judge advocate shall include a written and signed statement which sets forth the staff judge advocate's:

(A) Conclusion with respect to whether each specification alleges an offense under the UCMJ;

(B) Conclusion with respect to whether there is probable cause to believe that the accused committed the offense charged in the specification;

(C) Conclusion with respect to whether a court-martial would have jurisdiction over the accused and the offense; and

(D) Recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline.

(2) *Special-court martial.* Subject to R.C.M. 406(b), before any charge may be referred for trial by a special court-martial, the convening authority shall consult a judge advocate on relevant legal issues. Such issues may include:

(A) Whether each specification alleges an offense under the UCMJ;

(B) Whether there is probable cause to believe the accused committed the offense(s) charged;

(C) Whether a court-martial would have jurisdiction over the accused and the offense;

(D) The form of the charges and specifications and any necessary modifications; and

(E) Any other factors relating to disposition of the charges and specifications in the interest of justice and discipline.

(b) *Special trial counsel determinations.* For all charges alleging covered offenses, and other charges over which special trial counsel has exercised authority and has not deferred,

referral to a special or general court-martial may be made only by a special trial counsel and the referral must be accompanied by a special trial counsel's written determination that:

(1) each specification under a charge alleges an offense under the UCMJ;

(2) there is probable cause to believe that the accused committed the offense charged; and

(3) a court-martial would have jurisdiction over the accused and the offense.

(c) *Distribution.*

(1) Subject to R.C.M. 406(c)(2), a copy of the written advice of the staff judge advocate shall be provided to the defense if charges are referred for trial by general court-martial.

(2) For those cases over which special trial counsel exercises exclusive authority, a copy of the written determination by special trial counsel shall be provided to the defense if charges are referred for trial by general or special court-martial."

Rule 406A. Pretrial advice before referral to special court-martial

Added of March 1, 2018

The President promulgated this R.C.M. 406A in 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2 § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018). Its effective date is January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date). It was first published in M.C.M. (2019 ed.). The President has not amended the rule.

The following summary appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 406A is new and implements Article 34(b), as amended by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(hh), 88 Fed. Reg. 50648 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The

President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(hh) R.C.M. 406A is deleted.

Rule 407. Action by commander exercising general court-martial jurisdiction

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2.

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

> (h) R.C.M. 407(a)(5) is amended to read as follows: "(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, after which additional action under this rule may be taken[.]"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 407(a)(4) and the accompanying Discussion are amended and reflect Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction over certain sex-related offenses to general courts-martial.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ii)-(jj), 88 Fed. Reg. 50648 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(ii) R.C.M. 407(a)(l) is amended to read as follows:

"(a) *Disposition.* Except for covered offenses and any other charges over which a special trial counsel has exercised authority and has not deferred, a commander exercising general court-martial jurisdiction, when in receipt of charges, may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing charges, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer any charge to a summary court-martial or to a special court-martial for trial;

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, after which additional action under this rule may be taken;

(6) Subject to R.C.M. 60l(d), refer any charge to a general court-martial."

(jj) R.C.M. 407(b) is amended to read as follows:

"(b) *National security matters.*

(1) Subject to R.C.M. 407(b)(2), when in receipt of charges the trial of which the commander exercising general court-martial jurisdiction finds would probably be detrimental to the prosecution of a war or harmful to national security, that commander, unless otherwise prescribed by regulations of the Secretary concerned, shall determine whether trial is warranted and, if so, whether the security considerations involved are paramount to trial. As the commander finds appropriate, the commander may dismiss the charges, authorize trial of them, or forward them to a superior authority.

(2) For charges and specifications over which a special trial counsel has exercised authority and has not deferred and a commander believes trial would be detrimental to the prosecution of a war or harmful to national security, the matter shall be forwarded to the Secretary concerned.

Rule 501. Composition and personnel of courts-marital

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(h), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> (h) R.C.M. 501(a)(1) is amended to read as follows:
>
> "(1) General courts-martial.
>
> (A) Except in capital cases, general courts-martial shall consist of a military judge and not less than five members, or of the military judge alone if requested and approved under R.C.M. 903.
>
> (B) In all capital cases, general courts-martial shall consist of a military judge and no fewer than 12 members, unless 12 members are not reasonably available because of physical conditions or military exigencies. If 12 members are not reasonably available, the convening authority shall detail the next lesser number of reasonably available members under 12, but in no event fewer than five. In such a case, the convening authority shall state in the convening order the reasons why 12 members are not reasonably available."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 501(a) and the accompanying Discussion are amended and reflect Articles 16, 25a, and 29, as amended by Sections 5161, 5183, and 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which require a set number of members for capital and non-capital general courts-martial and special courts-martial, eliminate special courts-martial without a military judge, establish a special court-martial consisting of a military judge alone with certain limitations on offenses and punishments, and authorize the convening authority to detail alternate members to general and special courts-martial.

Rule 502. Qualifications and duties of personnel of courts-martial

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(c), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. R.C.M. 502(b)(2)(B) is amended by striking out the comma at the end thereof.

Amendment of October 6, 1999

1. Source of the amendment: 1999 Amendments to the Manual for Courts-Martial, United States, § 1(a), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. Effective date of the amendment: November 1, 1999. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2000 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

a. R.C.M. 502(c) is amended to read as follows:

"(c) Qualifications of military judge. A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge

by the Judge Advocate General of the armed force of which such military judge is a member. In addition, the military judge of a general court-martial shall be designated for such duties by the Judge Advocate General or the Judge Advocate General's designee, certified to be qualified for duty as a military judge of a general court-martial, and assigned and directly responsible to the Judge Advocate General or the Judge Advocate General's designee. The Secretary concerned may prescribe additional qualifications for military judges in special courts-martial. As used in this subsection "military judge" does not include the president of a special court-martial without a military judge."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 502(a)(1) is amended and implements Article 25, as amended by Section 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which permits a convening authority to detail enlisted members to general and special courts-martial without requiring a request for such members from an enlisted accused.

R.C.M. 502(a)(2) and the accompanying Discussion are amended and reflect Articles 29 and 53, as amended by Sections 5187 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes the convening authority to detail alternate members to general and special courts-martial and addresses sentencing for capital offenses.

R.C.M. 502(c) and the accompanying Discussion are amended and reflect Articles 26 and 26a, as amended and added, respectively, by Sections 5184 and 5185 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which establish qualifications and minimum tour lengths for trial judges and authorizes the Secretary concerned to establish a military magistrate program.

R.C.M. 502(d)(1) and (2) and the accompanying Discussion are amended and reflect Article 27, as amended by Section 5186 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), with respect to the qualifications of trial counsel, assistant trial counsel,

defense counsel, assistant and associate defense counsel, individual military counsel, civilian defense counsel, and counsel learned in the law applicable to capital cases.

R.C.M. 502(d)(3) and the accompanying Discussion are amended and address disqualification of appellate military judges and counsel for witnesses and victims.

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(kk)-(ll), 88 Fed. Reg. 50649 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(kk) A new R.C.M. 502(d)(l)(C) is inserted immediately after R.C.M. 502(d)(l)(B) to read as follows:

"(C) *Qualifications of special trial counsel.* Only judge advocates qualified, certified, and assigned as special trial counsel may be detailed as special trial counsel in general and special courts-martial. In accordance with regulations prescribed by the Secretary concerned, a special trial counsel shall be a judge advocate who is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by the Judge Advocate General of the armed force of which the officer is a member or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps. Special trial counsel shall be well-trained, experienced, highly-skilled and competent in handling cases involving covered offenses."

(ll) R.C.M. 502(d)(3)(A) is amended to read as follows:

"(A) The accuser, except that any determination by a special trial counsel to prefer or refer charges shall not disqualify that special trial counsel;".Amendment of July 28, 2023 (Annex 3)

Amendment of July 28, 2023 (Annex 3)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(a), 88 Fed. Reg. 50702 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance

with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(a) R.C.M. 502(a)(2)(A) is amended to read as follows:

"(A) *Members.* The members of a court-martial shall determine whether the accused is proved guilty and, in a capital case in which the accused is unanimously found guilty of a capital offense, the members shall make a determination in accordance with Article 53(c)(l)(A). Each member has an equal voice and vote with other members in deliberating upon and deciding all matters submitted to them. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Manual, reports of decided cases, or any other reference material."

Rule 503. Detailing members, military judge, and counsel, and designating military magistrates

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of Mar. 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(c), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 503 . . . shall apply only in cases in which arraignment has been completed on or after March 12, 1987." *Id.* § 5(c). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. R.C.M. 503(a)(2) is amended by inserting in the first sentence "orally on the record or" after "request".

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, §§ 1(g), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(i) R.C.M. 503(a)(3) is amended by deleting "court-martial" and inserting "courts-martial" in lieu thereof.

(j) R.C.M. 503(b)(3) is amended by inserting the words ", a combatant command or joint command" after the words "A military judge from one armed force may be detailed to a court-martial convened in a different armed force".

(k) R.C.M. 503(c)(3) is amended by inserting the words ", a combatant command or joint command" after the words "A person from one armed force may be detailed to serve as counsel in a court-martial in a different armed force".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 503(a)(1) and (2) and the accompanying Discussions are amended and reflect Articles 25, 25a, and 29, as amended by Sections 5182, 5183, and 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding detailing of members, excusal of members, and impanelment of alternate members.

R.C.M. 503(a)(4) is new and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by

Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which permits a convening authority to refer charge(s) and specification(s) to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

R.C.M. 503(b)(4) is new and implements Articles 19 and 30a, as amended by Sections 5163 and 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and Article 30a is further amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 15591, 131 Stat. 1283 (2017), which authorizes military judges to detail military magistrates, if authorized under regulations of the

Secretary concerned, to preside over certain pre-referral proceedings and special courts-martial consisting of a military judge alone in specified circumstances.

R.C.M. 503(c)(1) is amended and implements Article 27, as amended by Section 5186 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), with respect to counsel learned in the law applicable to capital cases.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(mm)-(nn), 88 Fed. Reg. 50650 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(mm) R.C.M. 503(a) is amended to read as follows:

"(a) *Members.*

(1) *In general.* The convening authority shall—

(A) detail qualified persons as members for courts-martial in accordance with the

criteria described in Article 25;

(B) state whether the military judge is—

(i) authorized to impanel a specified number of alternate members; or

(ii) authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain; and

(C) provide a list of the detailed members to the military judge to randomize in accordance with R.C.M. 911."

(nn) R.C.M. 503(c)(l) is amended to read as follows:

"(1) *By whom detailed.* Trial and defense counsel, assistant trial and defense counsel, and associate defense counsel shall be detailed in accordance with these rules and the regulations of the Secretary concerned. If authority to detail counsel has been delegated to a person, that person may detail himself or herself as counsel for a court-martial. For each general and special court-martial for which charges and specifications were referred by special trial counsel, a special trial counsel shall be detailed as trial counsel, and, in accordance with regulations prescribed by the Secretary concerned, a special trial counsel may detail other trial counsel who are judge advocates. In a capital case, counsel learned in the law applicable to such cases under R.C.M. 502(d)(2)(C) shall be assigned in accordance with regulations of the Secretary concerned."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(r), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 23, 2024. *See id.* § 5 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(r) R.C.M. 503(a)(1) is amended to read as follows:

"(1) In general. The convening authority shall—

(A) detail qualified persons as members for courts-martial in accordance with the criteria described in Article 25;

(B) provide to the military judge—

(i) in a capital general court-martial, at least 24 detailed members for randomization; randomization; randomization; or

(ii) in a non-capital general court-martial, at least 16 detailed members for

(iii) in a special court-martial, at least 8 detailed members for

(iv) where a convening authority determines it to be impracticable to meet the requirements of R.C.M. 503(a)(1)(B)(i)-(iii) due to exceptional circumstances, a sufficient number of detailed members to allow for the randomization process in R.C.M. 911. Exceptional

circumstances include circumstances in which the minimum required numbers of detailed members are not available due to a military necessity or exigency;

(C) consult with the servicing staff judge advocate prior to making a determination under R.C.M. 503(a)(1)(B)(iv) that it is impracticable to meet the requirements of R.C.M. 503(a)(1)(B)(i)-(iii);

(D) document in writing any determination under R.C.M. 503(a)(1)(B)(iv) that exceptional circumstances exist, pursuant to procedures prescribed by the Secretary concerned; (E) state whether the military judge is—

(i) authorized to impanel a specified number of alternate members; or

(ii) authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain; and

(F) provide a list of the detailed members to the military judge to randomize in accordance with R.C.M. 911."

Rule 504. Convening courts-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, §§ 1(l)-(m), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.)

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(l) R.C.M. 504, (b)(2)(A) is amended by inserting the following at the end thereof:

"A subordinate joint command or joint task force is ordinarily considered to be "separate or detached.""

(m) R.C.M. 504, (b)(2)(B) is amended by deleting the word "or" at the end of the first element thereof, by deleting the period and adding " ; or" at the end of the second element thereof, and by inserting the following as a third element:

"(iii) In a combatant command or joint command, by the officer exercising general court-martial jurisdiction over the command."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 504(d) is amended and aligns with the 2018 Amendments to R.C.M. 503(a).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(oo)-(pp), 88 Fed. Reg. 50651 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(oo) R.C.M. 504(b)(l) is amended to read as follows:

"(1) *General courts-martial.* Unless otherwise limited by superior competent authority, general courts-martial may be convened by persons occupying positions designated in Article 22(a) and by any commander designated by the Secretary concerned or empowered by the President. A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special or general court-martial to which charges and specifications were referred by a special trial counsel."

(pp) R.C.M. 504(b)(2)(B)(i) is amended to read as follows:

"(i) In the Army, Air Force, or Space Force, by the officer exercising general court-martial jurisdiction over the command; or".

Rule 505. Changes of members, military judge, and counsel

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 505(a) is amended and aligns with the 2018 Amendments to R.C.M. 503(b)(4) regarding military magistrates.
>
> R.C.M. 505(b) is amended and aligns with the 2018 Amendments to R.C.M. 1202 regarding the certification of the record of trial.
>
> R.C.M. 505(c)(2) is amended and aligns with the 2018 Amendments to R.C.M. 501 and 912A regarding fixed panel sizes in general and special courts-martial and the procedure for excusing excess members at impanelment. The Discussion accompanying R.C.M. 505(c)(2) is new.
>
> R.C.M. 505(e) is amended and describes the circumstances in which the military magistrate can be changed before and after assembly of the court-martial. The Discussion accompanying R.C.M. 505(e) is new.
>
> R.C.M. 505(f) is amended and describes the circumstances in which good cause would exist to change the military magistrate.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(qq)-(rr), 88 Fed. Reg. 50651 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act

and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(qq) R.C.M. 505(c)(l)(A) is amended to read as follows:

"(A) *By convening authority.* Before the court-martial is assembled, the convening authority may change the members detailed to the court-martial without showing cause. New members shall be detailed in accordance with R.C.M. 503(a)."

(rr) R.C.M. 505(c)(2)(B) is amended to read as follows:

"(B) *New members.* In accordance with R.C.M. 503(a), new members may be detailed after assembly only when, as a result of excusals under R.C.M. 505(c)(2)(A), the number of members of the court-martial is reduced below the number of members required under R.C.M. 50l(a), or the number of enlisted members, when the accused has made a timely written request for enlisted members, is reduced below one-third of the total membership."

Rule 506. Accused's rights to counsel

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(d), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

d. R.C.M. 506(a) is amended by inserting a comma after "selection".

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2.

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

(k) R.C.M. 506(b)(2) is amended by replacing "investigation" with "preliminary hearing."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 506(a) and the accompanying Discussion are amended and align with the 2018 Amendments to R.C.M. 502(d)(2)(C) regarding the detailing of defense counsel in capital cases.

Rule 601. Referral

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(l), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 601 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 601 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(l) R.C.M. 601(g) is inserted immediately after R.C.M. 601(f) and reads as follows:

"(g) Parallel convening authorities. If it is impracticable for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if referred, to be transmitted to a parallel convening authority. This transmittal must be in writing and in accordance with such regulations as the Secretary concerned may prescribe. Subsequent actions taken by the parallel convening authority are within the sole discretion of that convening authority."

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2.

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

(1) R.C.M 601(d)(2)(A) is amended to read as follows:

"(A) There has been substantial compliance with the preliminary hearing requirements of R.C.M. 405; and"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 1, § 1(b) & Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendments: The amendment to R.C.M. 601(d)(2)(B), which was made in Annex 1, § 1(b), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date). The other amendments to R.C.M. 601, which were made in Annex 2, § 2, took effect on January 1, § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 1, § 1(b), made the following amendment:

Section 1. Part II of the Manual for Courts-Martial, United States is amended as follows:

* * *

(b) R.C.M. 601(d)(2)(B) is amended to read as follows:

"The convening authority has received the advice of the staff judge advocate required under R.C.M. 406. ~~These requirements may be waived by the accused.~~"

Annex 2, § 2 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 601(a) is amended and clarifies that referral is the order of a convening authority that charges and specifications against an accused will be tried by a specified court-martial.
>
> R.C.M. 601(d) is amended and implements Article 34(b), as amended by Section 5205 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial and also prohibits a convening authority from referring charge(s) and specification(s) to a general court-martial unless a staff judge advocate provides written advice stating that the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charges, and a court-martial would have jurisdiction over the accused and the offense. Prior to referring charge(s) and specification(s) to a general court-martial, the staff judge advocate is also required to provide a recommendation to the convening authority as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline. *See also* R.C.M. 406.
>
> R.C.M. 601(e)(1) is amended and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), concerning referring charges and specifications in a capital case or in a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ss), 88 Fed. Reg. 50652 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (ss) R.C.M. 601 is amended to read as follows:
>
> "Rule 601. Referral

(a) *In general.* Referral is the order of a convening authority or a special trial counsel that one or more charges and specifications against an accused will be tried by a specified court-martial.

(b) *Who may refer.*

(1) Except as provided in R.C.M. 60l(b)(2), any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do so has been withheld by superior competent authority.

(2) For charges over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may refer charges to a court-martial.

(c) *Disqualification.*

(1) Except as provided in R.C.M. 60l(c)(2), an accuser may not refer charges to a general or special court-martial.

(2) A special trial counsel shall not be disqualified from referring charges to a general or special court-martial as a result of having preferred charges or having caused charges to be preferred.

(d) *When charges may be referred.*

(1) *Basis for referral.*

(A) Except as provided in R.C.M. 60l(d)(l)(B), if the convening authority finds or is advised by a judge advocate that there is probable cause to believe that an offense triable by a court-martial has been committed and that the accused committed it, and that the specification alleges an offense, the convening authority may refer it. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general or special court-martial except in compliance with R.C.M. 601(d)(2) or (d)(3). The convening authority or judge advocate shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.

(B) For offenses over which a special trial counsel has exercised authority and has not deferred, if a special trial counsel makes a written determination that each specification under a charge alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charged, and the court-martial would have jurisdiction over the accused and the offense, a special trial counsel may refer it. The finding may be based on hearsay in whole or in part. A special trial counsel may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general court-martial except in compliance with R.C.M. 601(d)(2) or (d)(3). A special trial counsel shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.

(2) *Consideration.* Referral authorities shall consider whether the admissible evidence will probably be sufficient to obtain and sustain a conviction.

(3) *General courts-martial.* Charges may not be referred to a general court-martial unless there has been substantial compliance with the preliminary hearing requirements of R.C.M. 405 and:

(A) The convening authority has received the advice of the staff judge advocate required under R.C.M. 406(a)(l) and Article 34(a); or

(B) A special trial counsel has made a written determination as required under R.C.M. 406(b) and Article 34(c).

(4) *Special courts-martial.* Charges may not be referred to a special court-martial unless:

(A) The convening authority has consulted with a judge advocate as required under R.C.M. 406(a)(2) and Article 34(b); or

(B) A special trial counsel has made a written determination as required under R.C.M. 406(b) and Article 34(c).

(e) *How charges shall be referred*

(1) *Order, instructions.* Referral shall be by the personal order of the referral authority.

(A) *Capital cases.* If a case is to be tried as a capital case, the referral authority shall so indicate by including a special instruction on the charge sheet in accordance with R.C.M.

1004(b)(1).

(B) *Special court-martial consisting of a military judge alone.* If a case is to be tried as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), the referral shall so indicate by including a special instruction on the charge sheet prior to arraignment.

(C) *Other instructions.* The referral authority may include any other additional instructions in the order as may be required.

(2) *Joinder of offenses.* In the discretion of the referral authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious or minor offenses or both, regardless of whether the offenses are connected. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements concerning the additional charges have been complied with. After arraignment of the accused upon charges, no additional charges may be referred to the same trial without consent of the accused.

(3) *Joinder of accused* Allegations against two or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such accused may be charged in one or more specifications together or separately, and every accused need not be charged in each specification. Related allegations against two or more accused which may be proved by substantially the same evidence may be referred to a common trial.

(t) *Superior convening authorities.* Except as otherwise provided in these rules, a superior competent authority may cause charges, whether or not referred, to be transmitted to the authority for further consideration, including, if appropriate, referral.

(g) *Parallel convening authorities.*

(1) Except as provided in R.C.M. 601(g)(2), if it is impracticable for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even referred, to be transmitted to a parallel convening authority. This transmittal must be in writing and in accordance with such regulations as the Secretary concerned may prescribe. Subsequent actions taken by the parallel convening authority are within the sole discretion of that convening authority.

(2) For offenses over which a special trial counsel has exercised authority and has not deferred, a convening authority seeking to transfer charges to a parallel convening authority may do so in accordance with these rules and such regulations prescribed by the Secretary concerned."

Rule 602. Service of charges

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 602 is amended and implements Article 35, as amended by Section 5206 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) regarding the time periods applicable to service of charges and commencement of trial, and sets forth the consequences for defense failure to object to proceeding during the applicable period.

Rule 603. Changes to charges and specifications

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(aaa), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> (aaa) R.C.M. 603(b) and R.C.M. 912(f)(l)(F) are amended by changing "an investigating officer" to "a preliminary hearing officer".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 603 and the accompanying Discussions are revised and clarify the definition of major and minor changes that may be made to charges and specifications that have been referred to trial by court-martial, and the timing requirements for making such changes to the charges and specifications.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(tt), 88 Fed. Reg. 50655 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The

President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(tt) R.C.M. 603(a) is amended to read as follows: "(a) *In general.* Any person forwarding, acting upon, or prosecuting charges on behalf of the United States, except a preliminary hearing officer appointed under R.C.M. 405, may make major and minor changes to charges or specifications in accordance with this rule. For charges over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may make or cause to be made major and minor changes to charges or specifications in accordance with this rule."

Rule 604. Withdrawal of charges

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(uu), 88 Fed. Reg. 50656 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(uu) R.C.M. 604(a) is amended to read as follows:

"(a) *Withdrawal.*

(1) Except as provided in R.C.M. 604(a)(2), the convening authority or a superior competent authority may for any reason cause any charge or specification to be withdrawn from a court-martial at any time before findings are announced.

(2) For charges over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may withdraw or cause to be withdrawn any charge or specification from the court-martial at any time before findings are announced."

Rule 701. Discovery

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(d), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 701(b) . . . shall apply to any offense committed on or after November 14, 1986." *Id.* § 5(b). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> d. R.C.M. 701(b)(2) is amended by striking out "a mental disease, defect, or other condition bearing upon the guilt of the accused" and inserting in lieu thereof "the defense of lack of mental responsibility".

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, §§ 1(c)-(d), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: These amendments "shall apply only in cases in which charges are preferred on or after July 6, 1991." *Id.* § 4(c).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendments:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> c. R.C.M. 701(a)(3)(B) is amended to read as follows:
>
> "(B) To rebut a defense of alibi, innocent ingestion, or lack of mental responsibility, when trial counsel has received timely notice under subsection (b)(1) or (2) of this rule."
>
> d. R.C.M. 701(b) is amended—

(1) in subparagraph (1) to read as follows:

"(1) Names of witnesses and statements.

(A) Before the beginning of trial on the merits, the defense shall notify the trial counsel of the names and addresses of all witnesses, other than the accused, whom the defense intends to call during the defense case in chief, and provide all sworn or signed statements known by the defense to have been made by such witnesses in connection with the case.

(B) Upon request of the trial counsel, the defense shall also

(1) provide the trial counsel with the names and addresses of any witnesses whom the defense intends to call at the presentencing proceedings under R.C.M. 1001(c); and

(2) permit the trial counsel to inspect any written material that will be presented by the defense at the presentencing proceeding.";

(2) in subparagraph (2) to read as follows:

"(2) Notice of certain defenses. The defense shall notify the trial counsel before the beginning of trial on the merits of its intent to offer the defense of alibi, innocent ingestion, or lack of mental responsibility, or its intent to introduce expert testimony as to the accused's mental condition. Such notice by the defense shall disclose, in the case of an alibi defense, the place or places at which the defense claims the accused to have been at the time of the alleged offense, and, in the case of an innocent ingestion defense, the place or places where, and the circumstances under which the defense claims the accused innocently ingested the substance in question, and the names and addresses of the witnesses upon whom the accused intends to rely to establish any such defenses."; and

(3) in subparagraph (5) to read as follows:

"(5) Inadmissibility of withdrawn defense. If an intention to rely upon a defense under subsection (b)(2) of this rule is withdrawn, evidence of such intention and disclosures by the accused or defense counsel made in connection with such intention is not, in any court-martial, admissible against the accused who gave notice of the intention."

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(f), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only in cases in which charges are preferred on or after January 21, 1994." *Id.* § 4(c).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

f. R.C.M. 701(g)(3)(C) is amended to read as follows:

"(C) Prohibit the party from introducing evidence, calling a witness, or raising a defense not disclosed; and".

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(b), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

b. R.C.M. 701(b)(4) is amended to read as follows:

"(4) Reports of examination and tests. If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302, and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, that are within the possession, custody, or control of the defense that the defense intends to introduce as evidence in the defense case-in-chief at trial or that were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(d), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *Id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(d) R.C.M. 701(e) is amended to read as follows:

"(e) Access to witnesses and evidence. Each party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence, subject to the limitations in subsection (e)(1) of this rule. No party may unreasonably impede the access of another party to a witness or evidence.

(1) Counsel for the Accused Interview of Victim of Alleged Sex-Related Offense.

(A) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of a sex-related offense whom counsel for the Government intends to call to testify at a court-martial, counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall make any request to interview that victim through the Special Victims' Counsel or other counsel for the victim, if applicable.

(B) If requested by an alleged victim of a sex-related offense who is subject to a request for interview under subsection (e)(1)(A) of this, rule, any interview of the victim by counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall take place only in the presence of counsel for the Government, counsel for the victim, or a sexual assault victim advocate.

(C) In this subsection, the term "sex-related offense" means—

(i) a violation of Article 120, 120a, 120b, 120c, or 125; or

(ii) an attempt to commit an offense specified in subsection (e)(1)(C)(i) of this rule under Article 80."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 1, § 1(c) & Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendments: The amendment to R.C.M. 701(g)(2), which was made in Annex 1, § 1(c), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date). The other amendments to R.C.M. 701, which were made in Annex 2, § 2, took effect on January 1, 2019. *Id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 1, § 1(c), made the following amendment:

Section 1. Part II of the Manual for Courts-Martial, United States is amended as follows:

* * *

(c) R.C.M. 701(g)(2) is amended to read as follows:

(2) *Protective and modifying orders*. Upon a sufficient showing the military judge may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Subject to limitations in Part III of this Manual, if any

rule requires or ~~U~~upon motion by a party, the military judge may review any materials in camera and permit the party to make such showing, in whole or in part, in writing to be inspected only by the military judge in camera. If the military judge reviews any material in camera ~~grants relief after such an ex parte showing~~, the entirety of any materials examined by the military judge shall be ~~sealed and~~ attached to the record of trial as an appellate exhibit. The military judge shall seal any materials examined in camera and not disclosed and may seal other materials as appropriate. Such material may be examined by reviewing or appellate authorities in accordance with R.C.M. 1103A~~closed proceedings for the purpose of reviewing the determination of the military judge~~.

In addition, the following summary of the changes to this rule made in Annex 1 and Annex 2 of Executive Order 13,825 appears in Appendix 15 of M.C.M. (2019 ed.):

The amendments to R.C.M. 701 clarify discovery practice in the military justice system. The amendments enhance efficiency and ensure the prompt disposition of offenses, while at the same time ensuring fairness to the accused and the equal opportunity of both the prosecution and defense to obtain witnesses and evidence guaranteed by Article 46.

R.C.M. 701(a) is amended and aligns with the 2018 Amendments to the disclosure provisions of R.C.M. 404A.

R.C.M. 701(a)(2)(A)(i) and (a)(2)(B)(i) are amended and specify the scope of trial counsel discovery obligations. The provisions broaden the scope of discovery, requiring disclosure of items that are "relevant" rather than "material" to defense preparation of a case, and adding a requirement to disclose items the government anticipates using in rebuttal.

R.C.M. 701(a)(3) and (5), and R.C.M 701(b)(1)(A) and (C)(i) are amended and require the trial counsel and defense counsel to provide contact information, rather than addresses, of witnesses.

R.C.M. 701(a)(6)(D) is added and clarifies that trial counsel must disclose to defense counsel information adverse to the credibility of prosecution witnesses or evidence. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999) (duty to disclose evidence favorable to the defense applies even in the absence of a request by the defense and encompasses impeachment evidence as well as exculpatory evidence).

R.C.M. 701(b)(2) and the accompanying Discussion are amended and require that the defense provide notice of certain defenses in writing.

R.C.M. 701(b)(3) is amended and permits the trial counsel to copy or photograph the items listed for disclosure by the defense.

R.C.M. 701(e)(1) is amended and conforms to Article 6b, as amended by Section 5105 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 701(g)(2) is amended and clarifies the applicability of Part III of the Manual for Courts-Martial to the examination of materials by the military judge *in camera*. R.C.M. 701(g)(2) is further amended and clarifies the responsibilities of the military judge with respect to sealing materials and attaching materials examined to the record of trial.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(vv)-(ww), 88 Fed. Reg. 50656 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(vv) R.C.M. 701(a) is amended to read as follows:

"(a) *Disclosure by trial counsel.* Except as otherwise provided in R.C.M. 701(±) and (g)(2), and unless previously disclosed to the defense, trial counsel shall provide the following to the defense:

(1) *Papers accompanying charges; convening orders; statements.* As soon as practicable after service of charges under R.C.M. 602, the trial counsel shall provide the defense with copies of, or, if extraordinary circumstances make it impracticable to provide copies, permit the defense to inspect:

(A) All papers that accompanied the charges presented to the convening authority;

(B) Any written determination made by a special trial counsel pursuant to Article

(C) Any written recommendation from a commander as to disposition;

(D) Any papers sent with charges upon a rehearing or new trial;

(E) The convening order and any amending orders; and

(F) Any sworn or signed statement relating to an offense charged in the case that

is in the possession of trial counsel.

(2) *Documents, tangible objects, reports.*

(A) After service of charges, upon request of the defense, the Government shall permit the defense to inspect any books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies of portions of these items, if the item is within the possession, custody, or control of military authorities and-

(i) the item is relevant to defense preparation;

(ii) the Government intends to use the item in the case-in-chief at trial;

(iii) the Government anticipates using the item in rebuttal; or

(iv) the item was obtained from or belongs to the accused.

(B) After service of charges, upon request of the defense, the Government shall permit the defense to inspect the results or reports of physical or mental examinations, and of any scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of military authorities, the existence of which is known or by the exercise of due diligence may become known to the trial counsel if

(i) the item is relevant to defense preparation;

(ii) the Government intends to use the item in the case-in-chief at trial; or

(iii) the Government anticipates using the item in rebuttal.

(3) *Witnesses.* Before the beginning of trial on the merits, trial counsel shall notify the defense of the names and contact information of the witnesses the trial counsel intends to call:

(A) In the prosecution case-in-chief; and

(B) To rebut a defense of alibi, innocent ingestion, or lack of mental responsibility, when the trial counsel has received timely notice under R.C.M. 701(b)(l) or (2).

(4) *Prior convictions of accused offered on the merits.* Before arraignment, the trial counsel shall notify the defense of any records of prior civilian or court-martial convictions of the accused of which the trial counsel is aware and which the trial counsel may offer on the merits for any purpose, including impeachment, and shall permit the defense to inspect such records when they are in the trial counsel's possession.

(5) *Information to be offered at sentencing.* Upon request of the defense, the trial counsel

shall:

(A) Permit the defense to inspect such written material as will be presented by the prosecution at the presentencing proceedings; and

(B) Notify the defense of the names and contact information of the witnesses the trial counsel intends to call at the presentencing proceedings under R.C.M. l00l(b).

(6) *Evidence favorable to the defense.* The trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence known to the trial counsel which reasonably tends to—

(A) Negate the guilt of the accused of an offense charged;

(B) Reduce the degree of guilt of the accused of an offense charged;

(C) Reduce the punishment; or

(D) Adversely affect the credibility of any prosecution witness or evidence."

(ww) R.C.M. 701(b)(4) is amended to read as follows:

"(4) *Reports of examination and tests.* If the defense requests disclosure under R.C.M. 701(a)(2)(B), upon compliance with such request by the Government, the defense, on request of the trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302, and Mil. R. Evid. 513) permit the trial counsel to inspect the results or reports, or copies thereof,

of any physical or mental examinations and of any scientific tests or experiments made in connection with the particular case if the item is within the possession, custody, or control of the defense; and—

(A) the defense intends to use the item in the defense case-in-chief at trial; or

(B) the item was prepared by a witness whom the defense counsel intends to call at trial and the results or reports relate to that witness' testimony."

Rule 702. Depositions

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(m)-(p), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(m) R.C.M. 702(a) is amended to read as follows:

"(a) In general. A deposition may be ordered whenever, after preferral of charges, due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at a preliminary hearing under Article 32 or a court-martial. A victim's declination to testify at a preliminary hearing or a victim's declination to submit to pretrial interviews shall not, by themselves, be considered exceptional circumstances. In accordance with subsection (b) of this rule, the convening authority or military judge may order a deposition of a victim only if it is determined, by a preponderance of the evidence, that the victim will not be available to testify at court-martial."

(n) R.C.M. 702(c)(2) is amended to read as follows: "(2) Contents of request. A request for a deposition shall include:

(A) The name and address of the person whose deposition is requested, or, if the name of the person is unknown, a description of the office or position of the person;

(B) A statement of the matters on which the person is to be examined; and

(C) Whether an oral or written deposition is requested."

(o) R.C.M. 702(c)(3)(A) is amended to read as follows:

"(A) Upon receipt of a request for a deposition, the convening authority or military judge shall determine whether the requesting party has shown, by a preponderance of the evidence, that due to exceptional circumstances and in the interest of justice, the testimony of the prospective witness must be taken and preserved for use at a preliminary hearing under Article 32 or court-martial."

(p) R.C.M. 702(d)(l) is amended to read as follows: "(1) Detail of deposition officer. When a request for a deposition is approved, the convening authority shall detail a judge advocate certified under Article 27(b) to serve as deposition officer. When the appointment of a judge advocate as deposition officer is not practicable, the convening authority may detail an impartial commissioned officer or appropriate civil officer authorized to administer oaths, not the accuser, to serve as deposition officer. If the deposition officer is not a judge advocate, an impartial judge advocate certified under Article 27(b) shall be made available to provide legal advice to the deposition officer."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

This rule is taken from Rule 702 of the M.C.M. (2016 edition) with substantial amendments, clarifies the circumstances in which depositions may be ordered and their uses at trial, and reflects Article 49, as amended by Section 5231 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), and the consequence for failure to object prior to or during a deposition, or to written interrogatories.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(xx), 88 Fed. Reg. 50659 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The

President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(xx) R.C.M. 702(b) is amended to read as follows:

"(b) *Who may order.* Upon request of a party:

(1) Subject to R.C.M. 702(b)(2), before referral, a convening authority, or, after referral, the convening authority or the military judge, may order a deposition.

(2) For offenses over which special trial counsel exercises authority:

(i) Before referral, only a military judge may order a deposition, pursuant to R.C.M. 309(b)(3).

(ii) After referral, only a military judge may order a deposition."

Rule 703. Production of witnesses and evidence

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(e), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

e. R.C.M. 703(f)(3) is amended by inserting "of" after "determination".

Amendment of April 18, 2007

1. Source of the amendment: 2007 Amendments to the Manual for Courts-Martial, United States, §1(a), Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007).

2. Effective date of the amendment: May 18, 2007. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 703(b)(1) is amended by adding at the end the following new sentences:

"With the consent of both the accused and Government, the military judge may authorize any witness to testify via remote means. Over a party's objection, the military judge may authorize any witness to testify on interlocutory questions via remote means or similar technology if the practical difficulties of producing the witness outweigh the significance of the witness' personal appearance (although such testimony will not be admissible over the accused's objection as evidence on the ultimate issue of guilt). Factors to be considered include, but are not limited to, the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the interlocutory proceeding that may be caused by the production of the witness; the willingness of the witness to testify in person; the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training; and, for child witnesses, the traumatic effect of providing in-court testimony."

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex §§ 1(g)-(k), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *Id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 703 as it was amended on June 13 2014 and before its subsequent amendment. The version of R.C.M. 703 in M.C.M. (2016 ed.) reflects the amendments of June 13, 2014, June 17, 2015, and September 16, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) R.C.M. 703(e)(2)(B) is amended to read as follows:

"(B) Contents. A subpoena shall state the command by which the proceeding is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command the person to whom it is directed to produce books, papers, documents, data, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena issued for an investigation pursuant to Article 32 shall not command any person to attend or give testimony at an Article 32 investigation."

(h) R.C.M. 703(e)(2)(C) is amended to read as follows:

"(C) Who may issue.

(1) A subpoena to secure evidence may be issued by:

(a) the summary court-martial;

(b) detailed counsel representing the United States at an Article 32 investigation;

(c) the investigating officer appointed under R.C.M. 405(d)(1);

(d) after referral to a court-martial, detailed trial counsel;

(e) the president of a court of inquiry; or

(f) an officer detailed to take a deposition.

(2) A subpoena to secure witnesses may be issued by:

(a) the summary court-martial; after referral to a court-martial, detailed trial

counsel;

(c) the president of a court of inquiry; or

(d) an officer detailed to take a deposition.[”]

(i) R.C.M. 703(e)(2)(D) is amended to read as follows:

"(D) Service. A subpoena may be served by the person authorized by this rule to issue it, a United States Marshal, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and by providing to the person named travel orders and a means for reimbursement for fees and mileage as may be prescribed by the Secretary concerned, or in the case of hardship resulting in the subpoenaed witness’s inability to comply with the subpoena absent initial government payment, by providing to the person named travel orders, fees, and mileage sufficient to comply with the subpoena in rules prescribed by the Secretary concerned."

(j) R.C.M. 703(e)(2)(G)(ii) is amended to read as follows:

"(ii) Requirements. A warrant of attachment may be issued only upon probable cause to believe that the witness was duly served with a subpoena, that the subpoena was issued in accordance with these rules, that a means of reimbursement of fees and mileage was provided to the witness or advanced to the witness in cases of hardship, that the witness is material, that the witness refused or willfully neglected to appear at the time and place specified on the subpoena, and that no valid excuse is reasonably apparent for the witness’s failure to appear."

(k) R.C.M. 703(f)(4)(B) is amended to read as follows:

"(B) Evidence not under the control of the Government. Evidence not under the control of the Government may be obtained by subpoena issued in accordance with subsection (e)(2) of this rule. A subpoena duces tecum to produce books, papers, documents, data, or other objects or electronically stored information for a pretrial investigation pursuant to Article 32 may be issued, following the convening authority’s order directing such pretrial investigation, by either the investigating officer appointed under R.C.M. 405(d)(1) or the

detailed counsel representing the United States. A person in receipt of a subpoena duces tecum for an Article 32 hearing need not personally appear in order to comply with the subpoena."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(q)-(s), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 703 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 703 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of September 16, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(q) R.C.M. 703(e)(2)(B) is amended to read as follows:

"(B) Contents. A subpoena shall state the command by which the proceeding is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command the person to whom it is directed to produce books, papers, documents, data, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena issued for a preliminary hearing pursuant to Article 32 shall not command any person to attend or give testimony at an Article 32 preliminary hearing."

(r) R.C.M. 703(e)(2)(C) is amended to read as follows:

“(C) Who may issue.

(1) A subpoena to secure evidence may be issued by:

(a) The summary court-martial;

(b) At an Article 32 preliminary hearing, detailed counsel for the government;

(c) After referral to a court-martial, detailed trial counsel;

(d) The president of a court of inquiry; or

(e) An officer detailed to take a deposition."

(s) R.C.M. 703(t)(4)(B) is amended to read as follows:

"(B) Evidence not under the control of the government. Evidence not under the control of the government may be obtained by a subpoena issued in accordance with subsection (e)(2)

of this rule. A subpoena duces tecum to produce books, papers, documents, data, or other objects or electronically stored information for a preliminary hearing pursuant to Article 32 may be issued, following the convening authority's order directing such preliminary hearing, by counsel for the government. A person in receipt of a subpoena duces tecum for an Article 32 hearing need not personally appear in order to comply with the subpoena."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(e), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(e) R.C.M. 703(a) is amended to read as follows:

"(a) In general. The prosecution and defense and the court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in R.C.M. 701(e)(1), including the benefit of compulsory process."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

This rule is taken from Rule 703 of the M.C.M. (2016 edition) with substantial amendments and clarifies the procedures for requesting the production of witnesses and evidence at trial. The amendments are as follows:

R.C.M. 703(d) is amended and clarifies the distinction between expert witnesses and expert consultants. *See, e.g., United States v. Warner*, 62 M.J. 114 (C.A.A.F. 2005): *United States v. Turner*, 28 M.J. 487 (C.M.A. 1989); *United States v. Langston*, 32 M.J. 894 (A.F.C.M.R. 1991).

R.C.M. 703(g)(3)(C) and (D) and the Discussion accompanying R.C.M. 703(g)(3)(C) are new and reflect Article 46, as amended by Section 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which authorizes the issuance of a pre-referral investigative subpoena under specified circumstances.

R.C.M. 703(g)(3)(C)(i) and (ii) and the accompanying Discussions are new. R.C.M. 703(g)(3)(C)(i) describes requirements for investigative subpoenas; R.C.M. 703(g)(3)(C)(ii) establishes a category of investigative subpoenas with respect to personal or confidential information of a victim consistent with the Fed. R. Crim. P. 17. This category of investigative subpoenas has special notice requirements, with appropriate exceptions for exceptional circumstances. The Discussion accompanying R.C.M. 703(g)(3)(C)(ii) also clarifies the meaning of the term "victim" for purposes of this provision.

R.C.M. 703(g)(3)(G) and (H) and the Discussion accompanying R.C.M. 703(g)(3)(H)(i) are amended and reflect Articles 30a and 46, as added and amended, respectively, by Sections 5202 and 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), which authorizes a military judge to review requests for relief from subpoenas prior to referral. Article 30a was amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 703(g)(4) is new and reflects that a request for subpoena may be accompanied by a request that the custodian of the evidence take all necessary step to preserve records and other evidence until such time as the items may be produced or inspected. *Cf. United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(l)-(n), 88 Fed. Reg. 50550 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(l) R.C.M. 703(d) is amended to read as follows:

"(d) *Employment of expert witnesses and consultants*.

(1) *Experts for the prosecution*. When the employment of a prosecution expert witness or consultant is considered necessary, counsel for the Government shall, in advance of employment of the expert, and with notice to the defense, submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(2) *Experts for the defense*. When the employment of a defense expert witness or consultant is considered necessary, the defense shall submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(A) After referral of charges, a denied defense request for an expert witness or consultant may be raised before the military judge. Motions for expert consultants may be raised *ex parte.* The military judge shall determine—

(i) in the case of an expert witness, whether the testimony is relevant and necessary; and

(ii) in the case of an expert consultant, whether the assistance is necessary for an adequate defense.

(B) If the military judge grants a motion for employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute, shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under subparagraph (g)(3)(E) of this rule."(m) R.C.M. 703(g)(3)(G) is amended to read as follows:

"(G) 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) of this rule 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."

(n) R.C.M. 703(g)(3)(H)(iii) is amended to read as follows:

"(iii) Form. A warrant of attachment shall be written. All documents in support of the warrant of attachment shall be attached to the warrant, together with any charge sheets and convening orders, if applicable."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(yy)-(aaa), 88 Fed. Reg. 50659 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(yy) R.C.M. 703(a) is amended to read as follows:

"(a) *In general.* The prosecution, defense, and court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in R.C.M. 701, including the benefit of compulsory process."

(zz) R.C.M. 703(d) is amended to read as follows:

"(d) *Employment of expert witnesses and consultants.*

(1) *Funding experts for the prosecution.* When the employment of a prosecution expert witness or consultant is considered necessary, counsel for the Government shall, in advance of employment of the expert, and with notice to the defense, submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(2) *Funding experts for the defense.* When the appointment or employment of a defense expert witness or consultant is considered necessary, the defense may submit a request for the appointment or funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(A) After referral of charges, a defense request for an expert witness or consultant may be raised before the military judge. Motions for expert consultants may be raised *ex parte.*

The military judge shall determine:

(i) in the case of an expert witness, whether the testimony is relevant and necessary;

(ii) in the case of an expert consultant, whether the assistance is necessary for an adequate defense.

(B) If the military judge grants a motion for the appointment or employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute, shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under R.C.M. 207(g)(3)(E).

(3) Notice of expert witnesses.

(A) Expert witnesses.

(i) Government. In addition to the requirements ofR.C.M. 701(a)(3), the Government shall provide the defense a written summary of the expected testimony from the expert witness.

(ii) Defense. After referral of charges, in addition to the requirements of R.C.M. 701(b)(l), the defense shall provide the Government a written summary of the expected testimony from the expert witness.

(B) Timing. The military judge shall set a date upon which notices under R.C.M. 703(d)(3)(A) are due to the opposing party.

(C) Failure to comply. If at any time it is brought to the attention of the military judge that a party has failed to comply with this rule, the military judge may take one or more of the following actions:

(i) Order the required notice;

(ii) Order the party to permit discovery;

(iii) Grant a continuance;

(iv) Prohibit the party from introducing evidence, calling a witness, or raising a defense not disclosed; and

(v) Enter such other order as is just under the circumstances."

(aaa) R.C.M. 703(g)(3) is amended to read as follows:

"(3) *Civilian witnesses and evidence not under the control of the Government subpoenas.*

(A) *In general.* The presence of witnesses not on active duty and evidence not under control of the Government may be obtained by subpoena.

(B) *Contents.* A subpoena shall state the command by which the proceeding or investigation is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein, or to produce evidence-including books, papers, documents, data, writings, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena shall not command any person to attend or give testimony at an Article 32 preliminary hearing.

(C) *Investigative subpoenas.*

(i) *In general.* In the case of a subpoena issued before referral for the production of evidence for use in an investigation, the subpoena shall command each person to whom it is directed to produce the evidence requested for inspection by the Government counsel who issued the subpoena or for inspection in accordance with an order issued by the military judge under R.C.M. 309(b).

(ii) *Subpoenas for personal or cor,jidential information about a victim.*

After preferral, a subpoena requiring the production of personal or confidential information about a victim named in a specification may be served on an individual or organization by those authorized to issue a subpoena under R.C.M. 703(g)(3)(E) or with the consent of the victim. Before issuing a subpoena under this provision and unless there are exceptional circumstances, the victim must be given notice so that the victim can move for relief under R.C.M 703(g)(3)(1) or otherwise object.

(D) *Ex parte request by defense.* Upon request by the defense after referral, including an *ex parte* request, the military judge shall issue a subpoena to compel the production of witnesses if the witness's testimony is determined to be relevant and necessary.

(E) *Who may issue.* A subpoena may be issued by:

(i) the military judge, after referral;

(ii) the summary court-martial;

(iii) the trial counsel of a general or special court-martial;

(iv) the president of a court of inquiry;

(v) an officer detailed to take a deposition; or

(vi) in the case of a pre-referral investigative subpoena, a military judge or, when issuance of the subpoena is authorized by a general court-martial convening authority, the detailed trial counsel or counsel for the Government.

(F) *Notice.* Notice shall be given to all parties for any subpoena issued for a witness post-referral unless, for good cause, the military judge issues a protective order.

(G) *Service.* A subpoena may be served by the person authorized by this rule to issue it, a United States Marshal, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and, in the case of a subpoena of an individual to provide testimony, by providing to the person named travel orders and a means for reimbursement for fees and mileage as may be prescribed by the Secretary concerned, or in the case of hardship resulting in the subpoenaed witness's inability to comply with the subpoena absent initial Government payment, by providing to the person named travel orders, fees, and mileage sufficient to comply with the subpoena in rules prescribed by the Secretary concerned.

(H) *Place of service.*

(i) *In general.* A subpoena may be served at any place within the United States, its Territories, Commonwealths, or possessions.

(ii) *Foreign territory.* In foreign territory, the attendance of civilian witnesses and evidence not under the control of the Government may be obtained in accordance with existing agreements or, in the absence of agreements, with principles of international law.

(iii) *Occupied territory.* In occupied enemy territory, the appropriate commander may compel the attendance of civilian witnesses located within the occupied territory.

(I) *Relief* If a person subpoenaed 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.

(J) *Neglect or refusal to appear or produce evidence.*

(i) *Issuance of warrant of attachment.* If the person subpoenaed neglects or refuses to appear or produce evidence, the military judge or, if before referral, a military judge detailed under Article 30a or a general court-martial convening authority, may issue a warrant of attachment to compel the attendance of a witness or the production of evidence, as appropriate.

(ii) *Requirements.* A warrant of attachment may be issued only upon probable cause to believe that the witness or evidence custodian was duly served with a subpoena, that the subpoena was issued in accordance with these rules, that a means of reimbursement of fees and mileage, if applicable, was provided to the witness or advanced to the witness in cases of hardship, that the witness or evidence is material, that the witness or evidence custodian refused or willfully neglected to appear or produce the subpoenaed evidence at the time and place specified on the subpoena, and that no valid excuse is reasonably apparent for the witness' failure to appear or produce the subpoenaed evidence.

(iii) *Form.* A warrant of attachment shall be written. All documents in support of the warrant of attachment shall be attached to the warrant, together with the charge sheet and convening orders.

(iv) *Execution.* A warrant of attachment may be executed by a United States Marshal or such other person who is not less than 18 years of age as the authority issuing the warrant may direct. Only such non-deadly force as may be necessary to bring the witness before the court-martial or other

proceeding or to compel production of the subpoenaed evidence may be used to execute the warrant. A witness attached under this rule shall be brought before the court-martial or proceeding without delay and shall testify or provide the subpoenaed evidence as soon as practicable and be released.

(v) *Definition.* For purposes of R.C.M. 703(g)(3)(J)(i), "military judge" does not include a summary court-martial."

Rule 703A. Warrant or order for wire or electronic communication

R.C.M. 703A did not exist in the original Rules for Courts-Martial.

Addition on March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 703A is new and implements Article 46, as amended by Section 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides authority for a military judge to issue a warrant or order for the disclosure of the contents of electronic communications by a provider of an electronic communication service or a remote computing service. *See also* 18 U.S.C. §§ 2703 and 2711, as amended by Section 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(o), 88 Fed. Reg. 50552 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:(o) R.C.M. 703A is amended to read as follows:

"Rule 703A. Warrant or order for wire or electronic communications

(a) *In general*. A military judge detailed in accordance with Article 26 or Article 30a, may, upon written application by a federal law enforcement officer, trial counsel, or other

authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, issue one or more of the following:

(1) A warrant for the disclosure by a provider of electronic communication service of the contents of any wire or electronic communication.

(2) A warrant for the disclosure by a provider of remote computing service of the contents of any wire or electronic communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and (B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(3) A warrant or order for the disclosure by a provider of electronic communication service or remote computing service of a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications).

(b) *Warrant procedures*.

(1) *Probable cause required.* A military judge shall issue a warrant authorizing the search for and seizure of information specified in subsection (a) of this rule if—

(A) The federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for the warrant presents an affidavit or sworn testimony, subject to examination by the military judge, in support of the application; and

(B) Based on the affidavit or sworn testimony, the military judge determines that there is probable cause to believe that the information sought contains evidence of a crime.

(2) *Issuing the warrant*. The military judge shall issue the warrant to the federal law enforcement officer, trial counsel, or other authorized counsel for the Government who applied for the warrant.

(3) *Contents of the warrant*. The warrant shall identify the property to be searched, identify any property or other information to be seized, and designate the military judge to whom the warrant must be returned.

(4) *Executing the warrant*. The presence of the federal law enforcement officer, trial counsel, or other authorized counsel for the Government identified in the warrant shall not be required for service or execution of a search warrant issued in accordance with this rule requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(5) *Quashing or modifying the warrant*. A military judge issuing a warrant under subsection (a), on a motion made promptly by the service provider, may quash or modify such warrant, if the warrant is determined to be unreasonable or oppressive or prohibited by law.

(c) *Order procedures*.

(1) A military judge shall issue an order authorizing the disclosure of information specified in paragraph (a)(3) of this rule if the federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for the order offers specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

(2) *Quashing or modifying order*. A military judge issuing an order under paragraph (c)(l) of this rule, on a motion made promptly by the service provider, may quash or modify such order if the order is determined to be unreasonable, oppressive, or prohibited by law.

(d) *Non-disclosure orders*.

(1) A federal law enforcement officer, trial counsel, or other authorized counsel for the Government acting under this rule may apply to a military judge for an order commanding a provider of electronic communications service or remote computing service to whom a warrant or order under this rule is directed, for such period as the military judge deems appropriate, not to notify any other person of the existence of the warrant or order. The military judge shall issue the order if the military judge determines that there is reason to believe that notification of the existence of the warrant or order will result in an adverse result described in paragraph (d)(2) of this rule.

(2) An adverse result for the purposes of paragraph (d)(l) of this rule is—

(A) endangering the life or physical safety of an individual;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(e) *No cause of action against a provider disclosing information under this rule*. As provided under 18 U.S.C. § 2703(e), no cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a warrant or order under this rule.

(t) *Requirement to preserve evidence*. To the same extent as provided in 18 U.S.C. § 2703(f)—

(1) A provider of wire or electronic communication services or a remote computing service, upon the request of a federal law enforcement officer, trial counsel, or other authorized counsel for the Government, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of an order or other process; and

(2) Shall retain such records and other evidence for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) *Definition*. As used in this rule, the term "federal law enforcement officer" includes an employee of the Army Criminal Investigation Command, the Naval Criminal Investigative

Service, the Air Force Office of Special Investigations, or the Coast Guard Investigative Service who has authority to request a search warrant."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(yy), 88 Fed. Reg. 50659 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(yy) R.C.M. 703(a) is amended to read as follows:

"(a) *In general.* The prosecution, defense, and court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in R.C.M. 701, including the benefit of compulsory process."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(s)-(v), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(s) R.C.M. 703(c)(2)(D) is amended to read as follows:

"(D) Determination. Trial counsel shall arrange for the presence of any witness listed by the defense unless trial counsel contends that the witness's production is not required under this rule. If trial counsel contends that the witness's production is not required by this rule, the matter may be submitted to the military judge. For good cause shown, the submission by the defense may be made by ex parte motion. If the military judge grants a motion for a witness, the trial counsel shall produce the witness or the proceedings may be abated."

(t) R.C.M. 703(d)(2)(B) is amended to read as follows:

"(B) If the military judge grants a motion for the appointment or employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute, shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under R.C.M. 703(g)(3)(G)."

(u) R.C.M. 703(g)(3)(C)(ii) is amended to read as follows:

"(ii) Subpoenas for personal or confidential information about a victim. After preferral, a subpoena requiring the production of personal or confidential information about a victim may be served on an individual or organization by those authorized to issue a subpoena under R.C.M. 703(g)(3)(E) or with the consent of the victim. Before issuing a subpoena under this provision and unless there are exceptional circumstances, the victim must be given timely notice so that the victim can move for relief under R.C.M. 703(g)(3)(I) or otherwise object."

(v) R.C.M. 703(g)(3)(I) is amended to read as follows:

"(I) Relief If either a person subpoenaed or a victim whose personal or 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."

Rule 704. Immunity

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(g), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only in cases in which charges are preferred on or after January 21, 1994." *Id.* § 4(c).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

g. R.C.M. 704(e) is amended to read as follows:

"(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the appropriate general court-martial convening authority. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion of the defense, grant appropriate relief directing that either an appropriate general court-martial convening authority grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 1, § 1(d)-(g), 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendments: March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States is amended as follows:

* * *

(d) R.C.M. 704(c) is amended to read as follows:

"(c) Authority to grant immunity. ~~Only a~~ A general court-martial convening authority, or designee, may grant immunity, and may do so only in accordance with this rule."

(e) R.C.M. 704(c)(l) is amended to read as follows:

"(1) Persons subject to the code. A general court-martial convening authority, or designee, may grant immunity to a ~~any~~ person subject to the code. However, a general court-martial convening authority, or designee, may grant immunity to a person subject to the code extending to a prosecution in a United States District Court only when specifically authorized to do so by the Attorney General of the United States or other authority designated under 18 U.S.C. § 6004."

(f) R.C.M. 704(c)(3) is amended to read as follows:

"(3) Other limitations. Subject to Service regulations, ~~T~~the authority to grant immunity under this rule may ~~not~~ be delegated in writing at the discretion of the general court-martial convening authority to a subordinate special court-martial convening authority. Further delegation is not permitted. The authority to grant or delegate the authority to grant immunity may be limited by superior authority."

(g) R.C.M. 704(e) is amended to read as follows:

"(e) Decision to grant immunity. Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the general court-martial convening authority, or designee. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion by the defense, grant appropriate relief directing that either an appropriate convening authority grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness ' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses."

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(bbb)-(ddd), 88 Fed. Reg. 50665 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(bbb) R.C.M. 704(c) is amended to read as follows:

"(c) *Authority to grant immunity.*

(1) Except as provided in R.C.M. 704(c)(2), a general court-martial convening authority, or designee, may grant immunity, and may do so only in accordance with this rule.

(2) For offenses over which a special trial counsel has exercised authority and has not deferred, a special trial counsel designated by the Secretary concerned, or that designated special trial counsel's designee, may grant immunity, and may do so only in accordance with this rule.

(3) *Persons subject to the UCMJ* A general court-martial convening authority, a special trial counsel designated by the Secretary concerned, or their designees, may grant immunity to a person subject to the UCMJ. However, they may grant immunity to a person subject to the UCMJ extending to a prosecution in a United States District Court only when specifically authorized to do so by the Attorney General of the United States or other authority designated under chapter 601 of title 18 of the U.S. Code.

(4) *Persons not subject to the UCMJ* A general court-martial convening authority, a special trial counsel designated by the Secretary concerned, or their designees, may grant immunity to persons not subject to the UCMJ only when specifically authorized to do so by the Attorney General of the United States or other authority designated in chapter 601 of title 18 of the U.S. Code.

(5) *Limitations on delegation.*

(A) Subject to Service regulations, the authority to grant immunity under this rule may be delegated in writing at the discretion of the general court-martial convening authority to a subordinate special court-martial convening authority. Further delegation is not permitted. The authority to grant immunity or delegate the authority to grant immunity may be limited by superior authority.

(B) Subject to Service regulations, the authority to grant immunity under this rule may be delegated at the discretion of a special trial counsel designated by the Secretary concerned to a subordinate special trial counsel. The authority to grant immunity or delegate the authority to grant immunity may be limited by superior authority. Any delegation shall be in writing."

(ccc) R.C.M. 704(d) is amended to read as follows:

"(d) *Procedure.*

(1) A grant of immunity shall be written and signed by the individual convening authority, special trial counsel designated by the Secretary concerned, or designee who issues it. The grant shall include a statement of the authority under which it is made and shall identify the matters to which it extends.

(2) Subject to Service regulations, the convening authority shall order a person subject to the UCMJ who has received a grant of immunity, to answer questions by investigators or to testify or answer questions by counsel pursuant to that grant of immunity."

(ddd) R.C.M. 704(e) is amended to read as follows:

"(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the general court-martial convening authority, special trial counsel designated by the Secretary concerned, as applicable, or their designees. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion by the defense, grant appropriate relief directing that either an appropriate convening authority or special trial counsel designated by the Secretary concerned,

as applicable, grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify;

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source, and does more than merely affect the credibility of other witnesses."

Rule 705. Plea agreements

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, §§ 1(e)-(f), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: These amendments "shall apply only in cases in which charges are preferred on or after July 6, 1991." *Id.* § 4(c).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendments:

Section 1. Part II of the Manual for Courts-Martial, United States, 1994 is amended as follows:

* * *

e. R.C.M. 705(c)(2) is amended by deleting the first sentence and substituting therefor the following sentence:

"(2) Permissible terms or conditions. Subject to subsection (c)(1)(A) of this rule, subsection (c)(1)(B) of this rule does not prohibit either party from proposing the following additional conditions:"

f. R.C.M. 705(d) is amended—

(1) by deleting subparagraph (1);

(2) by redesignating subparagraph (2) as subparagraph (1) and amending it to read as follows:

"(1) Negotiation. Pretrial agreement negotiations may be initiated by the accused, defense counsel, trial counsel, the staff judge advocate, convening authority, or their duly authorized representatives. Either the defense or the government may propose any term or

condition not prohibited by law or public policy. Government representatives shall negotiate with defense counsel unless the accused has waived the right to counsel.";

(3) by redesignating subparagraph (3) as subparagraph (2) and amending it to read as follows:

"(2) Formal submission. After negotiation, if any, under subsection (d)(1) of this rule, if the accused elects to propose a pretrial agreement, the defense shall submit a written offer. All terms, conditions, and promises between the parties shall be written. The proposed agreement shall be signed by the accused and defense counsel, if any. If the agreement contains any specified action on the adjudged sentence, such action shall be set forth on a page separate from the other portions of the agreement.";

(4) by redesignating subparagraph (4) as subparagraph (3) and amending it to read as follows:

"(3) Acceptance. The convening authority may either accept or reject an offer of the accused to enter into a pretrial agreement, or may propose by counteroffer any terms or conditions not prohibited by law or public policy. The decision whether to accept or reject an offer is within the sole discretion of the convening authority. When the convening authority has accepted a pretrial agreement, the agreement shall be signed by the convening authority or by a person, such as the staff judge advocate or trial counsel, who has been authorized by the convening authority to sign."; and

(5) by redesignating subparagraph (5) as subparagraph (4).

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(bbb), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 705 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 705 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(bbb) R.C.M. 705(c)(2)(E), R.C.M. 905(b)(l), and R.C.M. 906(b)(3) are amended by changing "Article 32 investigation" to "Article 32 preliminary hearing".

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(m) R.C.M. 705(c)(2)(A) is amended to read as follows:

"(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty or a confessional stipulation will be entered;"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 705 and the accompanying Discussions are substantially amended and reflect Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), and Articles 33, 56 and 60, as amended by Sections 5204, 5301 and 5321 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 705(e) of the M.C.M. (2016 edition) is renumbered as R.C.M. 705(f) and is amended and allows a military judge to notify a court-martial of the existence of a plea agreement upon either the request of an accused or to prevent a manifest injustice.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(p), 88 Fed. Reg. 50555 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(p) R.C.M. 705(d)(l) is amended to read as follows:

"(1) *In general*. Subject to such limitations as the Secretary concerned may prescribe pursuant to R.C.M. 705(a), a plea agreement that limits the sentence that can be imposed by the court-martial for one or more charges and specifications may contain:

(A) a limitation on the maximum punishment that can be imposed by the court-martial;

(B) a limitation on the minimum punishment that can be imposed by the court-martial;

(C) limitations on the maximum and minimum punishments that can be imposed by the court-martial; or,

(D) a specified sentence or portion of a sentence that shall be imposed by the court-martial."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ggg)-(iii), 88 Fed. Reg. 50669 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(ggg) R.C.M. 705(c)(2) is amended to read as follows:

"(2) *Permissible terms and conditions.* R.C.M. 705(c)(1)(A) and (1)(B) do not prohibit the convening authority, special trial counsel, or the accused from proposing the following additional conditions:

(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty or to which a confessional stipulation will be entered;

(B) A promise to testify as a witness in the trial of another person;

(C) A promise to provide restitution;

(D) A promise to conform the accused's conduct to certain conditions of probation before action by the convening authority in a summary court-martial or before entry of judgment in a general or special court-martial as well as during any period of suspension of the sentence, provided that the requirements ofR.C.M. 1108 must be complied with before an alleged violation of such terms may relieve the Government of the obligation to fulfill the agreement;

(E) A promise to waive procedural requirements such as the Article 32 preliminary hearing, the right to trial by a court-martial composed of members, the right to request trial by military judge alone, the right to elect sentencing by members if applicable, or the opportunity to obtain the personal appearance of witnesses at presentencing proceedings;

(F) When applicable, a provision requiring that the sentences to confinement adjudged by the military judge for two or more charges or specifications be served concurrently or consecutively. Such an agreement shall identify the charges or specifications that will be served concurrently or consecutively; and

(G) Any other term or condition that is not contrary to or inconsistent with this rule."

(hhh) R.C.M. 705(e)(3) is amended to read as follows:

"(3) *Acceptance by the convening authority or special trial counsel.*

(A) *In general.* The convening authority or special trial counsel, as applicable, may either accept or reject an offer of the accused to enter into a plea agreement or may propose by counteroffer any terms or conditions not prohibited by law or public policy. The decision whether to accept or reject an offer is within the sole discretion of the convening authority or special trial counsel, as applicable. When the convening authority has accepted a plea agreement, the agreement shall be signed by the convening authority or by a person, such as the staff judge advocate or trial counsel, who has been authorized by the convening authority to sign. When special trial counsel has accepted a plea agreement, the agreement shall be signed by special trial counsel.

(B) *Victim consultation.* Prior to the convening authority or special trial counsel, as applicable, accepting a plea agreement, the convening authority or special trial counsel shall make the convening authority's or special trial counsel's best efforts to provide the victim an opportunity to submit views concerning the plea agreement terms and conditions in accordance with regulations prescribed by the Secretary concerned. The convening authority or special trial counsel, as applicable, shall consider any such views provided prior to accepting a plea agreement. For purposes ofthis rule, a "victim" is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration."

(iii) R.C.M. 705(e)(4) is amended to read as follows:

"(4) *Withdrawal.*

(A) *By accused.* The accused may withdraw from a plea agreement at any time prior to the sentence being announced. If the accused elects to withdraw from the plea agreement after the acceptance of the plea agreement but before the sentence is announced, the military judge shall permit the accused to withdraw only for good cause shown. Additionally, the

accused may withdraw a plea of guilty or a confessional stipulation entered pursuant to a plea agreement only as provided in R.C.M. 910(h) or 81 l(d).

(B) *By convening authority or special trial counsel.* The convening authority or special trial counsel, as applicable, may withdraw from a plea agreement at any time:

(i) before substantial performance by the accused of promises contained in the agreement;

(ii) upon the failure by the accused to fulfill any material promise or condition in the agreement;

(iii) when inquiry by the military judge discloses a disagreement as to a material term in the agreement; or

(iv) if findings are set aside because a plea of guilty entered pursuant to the agreement is held improvident on appellate review."

Rule 706. Inquiry into the mental capacity or mental responsibility of the accused

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 1(e)-(f), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial . . . 706(c)(2) . . . shall apply to any offense committed on or after November 14, 1986." *Id.* § 5(c). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

e. R.C.M. 706(c)(1) is amended to read as follows:

"(1) By whom conducted. When a mental examination is ordered under subsection (b) of this rule, the matter shall be referred to a board consisting of one or more persons. Each member of the board shall be either a physician or a clinical psychologist. Normally, at least one member of the board shall be either a psychiatrist or a clinical psychologist. The board shall report as to the mental capacity, mental responsibility, or both of the accused.".

f. R.C.M. 706(c)(2) is amended as follows:

(1) Subsection (A) is amended to read as follows:

"(A) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? (The term "severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)";

(2) Subsection (C) is amended to read as follows:

"(C) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?"; and

(3) Subsection (D) is deleted and subsection (E) is redesignated as subsection (D).

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(c), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

c. R.C.M. 706(c)(2)(D) is amended to read as follows:

"(D) Is the accused presently suffering from a mental disease or defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense of the case?"

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(ccc), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ccc) R.C.M. 706(a), R.C.M. 706(c)(3)(A), R.C.M. 902(b)(2), R.C.M. 912(a)(l)(K), R.C.M. 1106(b), and R.C.M. 1112(c) are amended by changing "investigating officer" to "preliminary hearing officer".

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(q)-(r), 88 Fed. Reg. 50556 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(q) R.C.M. 706(b)(l) is amended to read as follows:

"(1) *Before referral*. Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the convening authority before whom the charges are pending for disposition, or by a military judge or magistrate in a proceeding conducted in accordance with R.C.M. 309."(r) R.C.M. 706(c)(3)(A) is amended to read as follows:

"(A) That upon completion of the board's investigation, a statement consisting only of the board's ultimate conclusions as to all questions specified in the order shall be submitted to the officer ordering the examination, the accused's commanding officer, the preliminary hearing officer, if any, appointed pursuant to Article 32, and to all government and defense counsel in the case, the convening authority, and, after referral, to the military judge."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(jjj)-(kkk), 88 Fed. Reg. 50671 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(jjj) R.C.M. 706(b)(l) is amended to read as follows:

"(1) *Before referral.* Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by any applicable convening authority, or by a military judge or magistrate in a proceeding conducted in accordance with R.C.M. 309."

(kkk) R.C.M. 706(b)(2) is amended to read as follows:

"(2) *After referral.* After referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the military judge. The convening authority may order such an inquiry after referral of charges but before beginning of the first session of the court-martial (including any Article 39(a) session) when the military judge is not reasonably available. The military judge may order a mental examination of the accused regardless of any earlier determination by any authority."

Rule 707. Speedy trial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(a), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" but "amendments to Rule for Courts-Martial 707(a) shall not apply to any condition on liberty imposed before March 1, 1986, and the effect of such a condition on liberty shall be considered under Rule for Courts-Martial 707(a) as it existed before March 1, 1986").

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 707(a) is amended to read as follows:

"(a) In general. The accused shall be brought to trial within 120 days after the earlier of:

"(1) Notice to the accused of preferral of charges under R.C.M. 308; or

"(2) The imposition of restraint under R.C.M. 304(a)(2)-(4)."

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(g), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "[T]he amendments made to Rules for Courts-Martial 707 . . . shall apply to any offense committed on or after March 12, 1987." *Id.* § 5(a). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

g. R.C.M. 707 is amended --

(1) in subsection (a) --

(a) by striking "or" in subsection (1);

(b) by striking the period at the end of subsection (2) and inserting in lieu thereof "; or"; and

(c) by inserting the following new paragraph at the end thereof:

"(3) Entry on active duty under R.C.M. 204."; and

(2) in subsection (c) by redesignating paragraph (8) as paragraph (9) and by inserting the following new paragraph after paragraph (7):

"(8) Any period of delay, not exceeding 60 days, occasioned in processing and implementing a request pursuant to R.C.M. 204 to order a member of a reserve component to active duty for disciplinary action.".

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(g), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: These amendments "shall apply only to cases in which arraignment occurs on or after July 6, 1991." *Id.* § 4(d).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1994 is amended as follows:

* * *

g. R.C.M. 707 is amended to read as follows:

"Rule 707. Speedy trial

(a) In general. The accused shall be brought to trial within 120 days after the earlier of:

(1) Preferral of charges;

(2) The imposition of restraint under R.C.M. 304(a)(2)-(4); or,

(3) Entry on active duty under R.C.M. 204.

(b) Accountability.

(1) In general. The date of preferral of charges, the date on which pretrial restraint under R.C.M. 304(a)(2)-(4) is imposed, or the date of entry on active duty under R.C.M. 204 shall not count for the purpose of computing time under subsection (a) of this rule. The date on which the accused is brought to trial shall count. The accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904.

(2) Multiple charges. When charges are preferred at different times, accountability for each charge shall be determined from the appropriate date under subsection (a) of this rule for that charge.

(3) Events which affect time periods

(A) Dismissal or mistrial. If charges are dismissed, or if a mistrial is granted, a new 120-day time period under this rule shall begin on the date of dismissal or mistrial for cases in which there is no repreferral and cases in which the accused is in pretrial restraint. In all other cases, a new 120-day time period under this rule shall begin on the earlier of

(i) the date of repreferral;

(ii) the date of imposition of restraint under R.C.M. 304(a)(2)-(4).

(B) Release from restraint. If the accused is released from pretrial restraint for a significant period, the 120-day time period under this rule shall begin on the earlier of

(i) the date of preferral of charges;

(ii) the date on which restraint under R.C.M. 304(a)(2)-(4) is reimposed; or

(iii) the date of entry on active duty under R.C.M. 204.

(C) Government appeals. If notice of appeal under R.C.M. 908 is filed, a new 120-day time period under this rule shall begin, for all charges neither proceeded on nor severed under R.C.M. 908(b)(4), on the date of notice to the parties under R.C.M. 908(b)(8) or 908(c)(3), unless it is determined that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. After the decision of the Court of Military Review under R.C.M. 908, if there is a further appeal to the Court of Military Appeals or, subsequently, to the Supreme Court, a new 120-day time period under this rule shall begin on the date the parties are notified of the final decision of the Court of Military Appeals or, if appropriate, the Supreme Court.

(D) Rehearings. If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority receives the record of trial and the opinion authorizing or directing a rehearing.

(c) Excludable delays. All periods of time covered by stays issued by appellate courts and all other pretrial delays approved by a military judge or the convening authority shall be excluded when determining whether the period in subsection (a) of this rule has run.

(1) Procedure. Prior to referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority or, if authorized under regulations prescribed by the Secretary concerned, to a military judge for resolution. After referral, such requests for pretrial delay will be submitted to the military judge for resolution.

(2) Motions. Upon accused's timely motion to a military judge under R.C.M. 905 for speedy trial relief, counsel should provide the court a chronology detailing the processing of the case. This chronology should be made part of the appellate record.

(d) Remedy. A failure to comply with the right to a speedy trial will result in dismissal of the affected charges. This dismissal will be with or without prejudice to the government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a reprosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.

(e) Waiver. Except as provided in R.C.M. 910(a)(2), a plea of guilty which results in a finding of guilty waives any speedy trial issue as to that offense."

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, §§ 1(d)-(e), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

d. R.C.M. 707(b)(3) is amended by adding subsection (E) which reads as follows:

"(E) Commitment of the incompetent accused. If the accused is committed to the custody of the Attorney General for hospitalization as provided in R.C.M. 909(f), all periods of such commitment shall be excluded when determining whether the period in subsection (a) of this rule has run. If, at the end of the period of commitment, the accused is returned to the custody of the general court-martial convening authority, a new 120-day time period under this rule shall begin on the date of such return to custody."

e. R.C.M. 707(c) is amended to read as follows:

"(c) Excludable delay. All periods of time during which appellate courts have issued stays in the proceedings, or the accused is hospitalized due to incompetence, or is otherwise in the custody of the Attorney General, shall be excluded when determining whether the period in subsection (a) of this rule has run. All other pretrial delays approved by a military judge or the convening authority shall be similarly excluded."

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, §§ 2(b)-(d), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) R.C.M. 707(b)(3)(D) is amended to read as follows:

"Rehearings. If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803."

(c) R.C.M. 707(c) is amended to read as follows:

"(c) Excludable delay. All periods of time during which appellate courts have issued stays in the proceedings, or the accused is absent without authority, or the accused is hospitalized due to incompetence, or is otherwise in the custody of the Attorney General, shall be excluded when determining whether the period in subsection (a) of this rule has run. All other pretrial delays approved by a military judge or the convening authority shall be similarly excluded."

(d) R.C.M. 707(d) is amended to read as follows:

"(d) Remedy. A failure to comply with this rule will result in dismissal of the affected charges, or, in a sentence-only rehearing, sentence relief as appropriate.

"(1) Dismissal. Dismissal will be with or without prejudice to the government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following

factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a re-prosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.

"(2) Sentence relief. In determining whether or how much sentence relief is appropriate, the military judge shall consider, among others, each of the following factors: the length of the delay, the reasons for the delay, the accused's demand for speedy trial, and any prejudice to the accused from the delay. Any sentence relief granted will be applied against the sentence approved by the convening authority."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 707(b)(3)(A) is amended and clarifies the effect of dismissal of charges or mistrial on the 120-day time period in which to bring a case to trial. The rule addresses both the circumstance where the accused, on the date of dismissal or mistrial, is under pretrial restraint and the circumstance where the accused, on the date of dismissal or retrial, is not under pretrial restraint. *See United States v. Anderson*, 50 M.J. 447 (C.A.A.F. 1997).

R.C.M. 707(e) is amended and clarifies the consequences of a plea of guilty on speedy trial issues as to the offense to which a plea of guilty is entered.

R.C.M. 707(f) is new and mandates that the trial of an accused held in pretrial restraint under R.C.M. 304(a)(3)-(4) be given priority, consistent with the Speedy Trial Act, *see* 18 U.S.C. § 3164 and Article 10, as amended by Section 5121 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(s)-(t), 88 Fed. Reg. 50556 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(s) R.C.M. 707(c)(l) is amended to read as follows:

"(1) *Procedure*. Prior to referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority for resolution. After referral, such requests for pretrial delay will be submitted to the military judge for resolution."

(t) R.C.M. 707(e) is amended to read as follows:

"(e) *Waiver*. Except as provided in R.C.M. 910(a)(2), a plea of guilty that results in a finding of guilty waives any speedy trial issue under this rule as to that offense."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(lll)-(ooo), 88 Fed. Reg. 50672 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(lll) R.C.M. 707(b)(3)(D) is amended to read as follows:

"(D) *Rehearings.* If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority or, for charges and specifications referred by a special trial counsel, the special trial counsel receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803."

(mmm) R.C.M. 707©(l) is amended to read as follows:

"(1) *Procedure.* Prior to referral, all requests for pretrial delay, together with supporting reasons and with notice to the defense, will be submitted to a convening authority with authority over the accused for resolution. The convening authority may delegate this authority to an Article 32 preliminary hearing officer. After referral, such requests for pretrial delay will be submitted to the military judge for resolution."

(nnn) R.C.M. 707(d)(l) is amended to read as follows:

"(1) *Dismissal.* Dismissal will be with or without prejudice to the Government's right to reinstitute court-martial proceedings against the accused for the same offense at a later

date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a reprosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial."

(ooo) R.C.M. 707(f) is amended as follows:

"(f) *Priority.* When considering the disposition of charges and the ordering of trials, a convening authority or special trial counsel shall give priority to cases in which the accused is held under those forms of pretrial restraint defined by R.C.M. 304(a)(3)-(4). Trial of or other disposition of charges against any accused held in arrest or confinement pending trial shall be given priority."

Rule 801. Military judge's responsibility; other matters

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(t), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(t) R.C.M. 801(a)(6) is inserted after R.C.M. 80l(a)(5) and reads as follows:

"(6) In the case of a victim of an offense under the UCMJ who is under 18 years of age and not a member of the armed forces or who is incompetent, incapacitated, or deceased, designate in writing a family member, a representative of the estate of the victim, or another suitable individual to assume the victim's rights under the UCMJ.

(A) For the purposes of this rule, the individual is designated for the sole purpose of assuming the legal rights of the victim as they pertain to the victim's status as a victim of any offense(s) properly before the court.

(B) Procedure to determine appointment of designee.

(i) As soon as practicable, trial counsel shall notify the military judge, counsel for the accused, and the victim(s) of any offense(s) properly before the court when there is an apparent requirement to appoint a designee under this rule.

(ii) The military judge will determine if the appointment of a designee is required under this rule.

(iii) At the discretion of the military judge, victim(s), trial counsel, and the accused may be given the opportunity to recommend to the military judge individual(s) for appointment.

(iv) The military judge is not required to hold a hearing before determining whether a designation is required or making such an appointment under this rule.

(v) If the military judge determines a hearing pursuant to Article 39(a), UCMJ, is necessary, the following shall be notified of the hearing and afforded the right to be present at the hearing: trial counsel, accused, and the victim(s).

(vi) The individual designated shall not be the accused.

© At any time after appointment, a designee shall be excused upon request by the designee or a finding of good cause by the military judge.

(D) If the individual appointed to assume the vic'im's rights is excused, the military judge shall appoint a successor consistent with this ru"e."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 801(a)(6) and the Discussion accompanying R.C.M. 801(a)(6)(E) are amended and reflect Article 6b, as amended by Section 5105 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). The Discussion accompanying R.C.M 801(a)(6)(E) also clarifies the meaning of the term "victim of an offense under the UCMJ" as it pertains to this rule.

R.C.M. 801(e) and (f) are amended and reflect the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017,

Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 802. Conferences

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(h), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: July 6, 1991. *See id.* at §§ 4, 4(g), 4(i) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

h. R.C.M. 802(c) is amended to read as follows:

"(c) Rights of Parties. No party may be prevented under this rule from presenting evidence or from making any argument, objection, or motion at trial."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 802(a) is amended and reflects Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017), which provides the authority for military judges to preside over specified proceedings prior to referral.

Subsection (f) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act of 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 803. Court-martial sessions with members under Article 39(a)

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 803 is amended and reflects the requirement for an entry of judgment in special and general courts-martial. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The last line of R.C.M. 803 is deleted and reflects the elimination of special courts-martial without a military judge. *See* Articles 16, 25, and 53, as amended by Sections 5161, 5182, and 5236, respectively, of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 1081(c)(1)(C) and 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(w), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(w) R.C.M. 803 is amended to read as follows:

"Rule 803. Court-martial sessions without members under Article 39(a) A military judge who has been detailed to the court-martial may, under Article 39(a), after service of charges, call the court-martial into session without the presence of members. Such sessions may be held before and after assembly of the court-martial, and when authorized in these rules, after adjournment and before entry of the judgment in the record. All such sessions are a part of the trial and shall be conducted in the presence of the accused, defense counsel, and trial counsel, in accordance with R.C.M. 804, and shall be made a part of the record."

Rule 804. Presence of the accused at trial proceedings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of October 6, 1999

1. Source of the amendment: 1999 Amendments to the Manual for Courts-Martial, United States, § 1(b), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. Effective date of the amendment: November 1, 1999. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2000 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

b. R.C.M. 804 is amended by redesignating the current subsecti©(c) as subsection (d) and inserting after subsection (b) the following new subsection (©

"(c) Voluntary absence for limited purpose of child testimony.

(1) Election by accused. Following a determination by the military judge that remote live testimony of a child is appropriate pursuant to Mil. R. Evid. 611(d)(3), the accused may elect to voluntarily absent himself from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(2) Procedure. The accused's absence will be conditional upon his being able to view the witness' testimony from a remote location. Normally, a two-way closed circuit television system will be used to transmit the child's testimony from the courtroom to the accused's location. A one-way closed circuit television system may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(3) Effect on accused's rights generally. An election by the accused to be absent pursuant to su©ction (c)(1) shall not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule."

Amendment of April 18, 2007

1. Source of the amendment: 2007 Amendments to the Manual for Courts-Martial, United States, §§ 1(b)-(c), Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007).

2. Effective date of the amendment: May 18, 2007. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.)

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) R.C.M. 804 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and inserting the following new paragraph (b):

"(b) Presence by remote means. If authorized by the regulations of the Secretary concerned, the military judge may order the use of audiovisual technology, such as videoteleconferencing technology, between the parties and the military judge for purposes of Article 39(a) sessions. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at his location. Such technology may include two or more remote sites as long as all parties can see and hear e© other."©) R.C.M. 804(c)(2) is redesignated as R.C.M. 804(d)(2) and amended

to read as follows:

"(2) Procedure. The accused's absence will be conditional upon his being able to view the witness' testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused's image and voice into the courtroom from a remote location as well as transmission of the child's testimony from the courtroom to the accused's location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019)

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 804(b) is amended and reflects the requirements of Article 39(b) with respect to remote proceedings and the physical presence of defense counsel with the accused, and prohibits the use of remote sessions for presentencing proceedings.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(u), 88 Fed. Reg. 50557 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(u) R.C.M. 804(b) is amended to read as follows:

"(b) *Presence by remote means*.

(1) The military judge may order the use of audiovisual technology, such as video teleconferencing technology, between the parties and the military judge for purposes of Article 39(a) sessions, subject to the limitations in paragraph (2) of this rule. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential

consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(2) The use of audiovisual technology between the parties and the military judge may be used for a plea inquiry under R.C.M. 910(d), (e), and (f) and for presentencing proceedings before a military judge under R.C.M. 1001, only when there are exceptional circumstances that interfere with the normal administration of military justice, as determined by the military judge, and with the consent of the accused. Defense counsel must be physically present at the accused's location during an inquiry prior to the acceptance of a plea under R.C.M. 910(d), (e), and (f) and during presentencing proceedings before a military judge under R.C.M. 1001."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ppp), 88 Fed. Reg. 50673 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(ppp) R.C.M. 804 is amended to read as follows:

"Rule 804. Presence at court-martial proceedings

(a) *Accused.*

(1) *Presence required.* The accused shall be present at the arraignment, the time of the plea, every stage of the trial including sessions conducted under Article 39(a), voir dire and challenges of members, the return of the findings, presentencing proceedings, and post-trial sessions, if any, except as otherwise provided by this rule. Attendance at these proceedings shall constitute the accused's appointed place of duty and, with respect to the accused's travel allowances, none of these proceedings shall constitute disciplinary action. This does not in any way limit authority to implement restriction, up to and including confinement, as necessary in accordance with R.C.M. 304 or R.C.M. 305.

(A) *Appearance.* The accused shall be properly attired in the uniform or dress prescribed by the military judge. An accused service member shall wear the insignia of grade and may wear any decorations, emblems, or ribbons to which the accused is entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused's commander shall render such assistance as may be reasonably necessary to ensure that the accused is properly attired.

(B) *Custody.* Responsibility for maintaining custody or control of an accused before and during trial may be assigned, subject to R.C.M. 304 and 305, and R.C.M. 804(c)(3), under such regulations as the Secretary concerned may prescribe.

(C) *Restraint.* Physical restraint shall not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge.

(2) *Continuation of proceeding without presence.* The further progress of the trial to and including the return of the findings and, if necessary, determination of a sentence shall not be prevented and the accused shall be considered to have waived the right to be present whenever an accused, initially present:

(A) Is voluntarily absent after arraignment (whether or not informed by the military judge of the obligation to remain during the trial); or

(B) After being warned by the military judge that disruptive conduct will cause the accused to be removed from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(3) *Remote presence of the accused.*

(A) Except as provided in R.C.M. 804(a)(3)(B), for Article 39(a) sessions, the military judge may order the accused be present via remote means through the use of audiovisual technology. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused may be present via remote means through the use of audiovisual technology for a plea inquiry under R.C.M. 910(d), (e) and (f), and presentencing proceedings before a military judge under R.C.M. 1001, only when there are exceptional circumstances that interfere with the normal administration of military justice, as determined by the military judge. The accused must consent to the use of audiovisual technology and defense counsel must be physically present at the accused's location for the hearing.

(4) *Voluntary absence for limited purpose of child testimony.*

(A) *Election by accused.* Following a determination by the military judge that remote live testimony of a child is appropriate pursuant to Mil. R. Evid. 611 (d)(3), the accused may elect to be voluntarily absent from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(B) *Procedure.* The accused's absence will be conditional upon the accused being able to view the witness' testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused's image and voice into the courtroom from a remote location as well as transmission of the child's testimony from the courtroom to the accused's location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall

be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(C) *Effect on accused's rights generally.* An election by the accused to be absent pursuant to R.C.M. 804(a)(4)(A) shall not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule.

(b) *Military judge.*

(1) No court-martial proceeding, except the deliberations of the members, may take place

in the absence of the military judge. The military judge may attend Article 39(a) sessions via remote means through the use of audiovisual technology.

(2) When a new military judge is detailed under R.C.M. 505(e)(2) after the presentation of evidence on the merits has begun in a trial before a military judge alone, trial may not proceed unless the accused requests, and the new military judge approves, trial by military judge alone, and a verbatim record of the testimony and evidence or a stipulation thereof is read to or played for the new military judge in the presence of the accused and counsel for both sides, or the trial proceeds as if no evidence had been presented.

(c) *Members.*

(1) Unless the accused is tried or sentenced by military judge alone, no court-martial proceeding may take place in the absence of any detailed member except: Article 39(a) sessions under R.C.M. 803; temporary excusal under R.C.M. 91l(b); examination of members under R.C.M. 912(d); when the member has been excused under R.C.M. 505, 912(f), or 912A; as otherwise provided in R.C.M. 1104(d)(l); or as otherwise provided in this Manual.

(2) When after presentation of evidence on the merits has begun, a new member is impaneled under R.C.M. 912A, trial may not proceed unless the testimony and evidence previously admitted on the merits, if recorded verbatim, is read to or played for the new member in the presence of the military judge, the accused, and counsel for both sides, or, if not recorded verbatim, and in the absence of a stipulation as to such testimony and evidence, the trial proceeds as if no evidence has been presented.

(d) *Counsel.* As long as at least one qualified counsel for each party is present, other counsel for each party may be absent from a court-martial session. In the case of a court-martial requiring the detailing of a special trial counsel, the presence of a special trial counsel is required unless a special trial counsel determines otherwise and another trial counsel, who is qualified according to Article 27(b), is also present. An assistant counsel who lacks the qualifications necessary to serve as counsel for a party may not act at a session in the absence of such qualified counsel. For purposes of Article 39(a) sessions and subject to R.C.M. 804(a)(3), the presence of counsel may be satisfied via remote means through the use of audiovisual technology.

(e) *Victim and Victim's Counsel.* Subject to R.C.M. 914B, at the discretion of the military judge and for good cause, the victim and victim's counsel may be present through the use of audiovisual technology."

Rule 805. Presence of military judge, members, and counsel

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(b), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> b. R.C.M. 805(b) is amended by striking out "911" each time it appears and inserting "912" in lieu thereof.

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(n), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 805 as amended on October 14, 2005 and before its subsequent amendment. The version of R.C.M. 805 in M.C.M. (2008 ed.) contains both the amendment of October 14, 2005 and the amendment of April 18, 2007.

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> (n) R.C.M. 805(b) is amended by replacing the current second sentence with the following:
>
> "No general court-martial proceeding requiring the presence of members may be conducted unless at least five members are present, or in capital cases, at least 12 members are present except as provided in R.C.M. 501(a)(1)(B), where 12 members are not reasonably available

because of physical conditions or military exigencies. No special court-martial proceeding requiring the presence of members may be conducted unless at least three members are present except as provided in R.C.M. 912(h).”\

Amendment of April 18, 2007

1. Source of the amendment: 2007 Amendments to the Manual for Courts-Martial, United States, §§1 (d), (e), Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007).

2. Effective date of the amendment: May 18, 2007. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(d) R.C.M. 805(a) is amended by adding at the end the following new sentence:

“If authorized by regulations of the Secretary concerned, for purposes of Article 39(a) sessions solely, the presence of the military judge at Article 39(a) sessions may be satisfied by the use of audiovisual technology, such as videoteleconferencing technology.”

(e) R.C.M. 805(c) is amended by adding at the end the following new sentences:

“If authorized by regulations of the Secretary concerned, for purposes of Article 39(a) sessions solely, the presence of counsel at Article 39(a)sessions may be satisfied by the use of audiovisual technology, such as videoteleconferencing technology. At least one qualified defense counsel shall be physically present with the accused.”

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 805(a) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5121 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the

National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 805(b) and the accompanying Discussion are amended and reflect Articles 16 and 25, as amended by Sections 5161 and 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which requires the use of fixed panel sizes, permits the accused the ability to request specified officer or enlisted composition, and permits the accused to elect sentencing by members, except where the court-martial is composed of a military judge alone.

R.C.M. 805(c) is amended and reflects the requirements of Article 39(b), with respect to remote proceedings and the physical presence of defense counsel with the accused, and prohibits the use of remote means to conduct presentencing proceedings.

R.C.M. 805(d) is amended and reflects Article 29(f), as amended by Section 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides the option of playing an audio recording of the trial to newly detailed panel members and judges.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(qqq), 88 Fed. Reg. 50677 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(qqq) R.C.M. 805 is amended to read as follows:

"Rule 805. [Reserved]".

Rule 806. Public trial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(c), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 806(d) and 1001(b)(3)(A) shall only apply in cases in which arraignment has been completed on or after May 15, 2002." *Id.* § 6(b).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

c. R.C.M. 806 is amended by adding at the end the following new sub-section (d):

"(d) Protective orders. The military judge may, upon request of any party or *sua sponte*, issue an appropriate protective order, in writing, to prevent parties and witnesses from making extrajudicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members. For purposes of this subsection, "military judge" does not include the president of a special court-martial without a military judge.".

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(e), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(e) R.C.M. 806(b) is amended to read as follows:

"(b) Control of spectators and closure.

"(1) Control of spectators. In order to maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, and exclude specific persons from the courtroom. When excluding specific persons, the military judge must make findings on the record establishing the reason for the exclusion, the basis for the military judge's belief that exclusion is necessary, and that the exclusion is as narrowly tailored as possible.

"(2) Closure. Courts-martial shall be open to the public unless (1) there is a substantial probability that an overriding interest will be prejudiced if the proceedings remain open; (2) closure is no broader than necessary to protect the overriding interest; (3) reasonable alternatives to closure were considered and found inadequate; and (4) the military judge makes case-specific findings on the record justifying closure."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(u)-(w), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 201 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 305 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(u) A new R.C.M. 806(b)(2) is inserted immediately after R.C.M. 806(b)(l) and reads as follows:

"(2) Right of victim to attend. A victim of an alleged offense committed by the accused may not be excluded from a court-martial relating to the offense unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding. The right to attend requires reasonable, accurate, and timely notice of a court-martial relating to the offense."

(v) A new R.C.M. 806(b)(3) is inserted immediately after the new R.C.M. 806(b)(2) and reads as follows:

"(3) Right of victim to confer. A victim of an alleged offense committed by the accused has the reasonable right to confer with the trial counsel."

(w) R.C.M. 806(b)(2) is renumbered as R.C.M. 806(b)(4).

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(o)-(s), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(o) R.C.M. 806(b)(2) is renumbered as R.C.M. 806(b)(3).

(p) A new R.C.M. 806(b)(2) is inserted immediately after R.C.M. 806(b)(l) and reads as follows:

"(2) Right of victim to notice. A victim of an alleged offense committed by the accused has the right to reasonable, accurate, and timely notice of court-martial proceedings relating to the offense."

(q) R.C.M. 806(b)(3) is renumbered as R.C.M. 806(b)(4).

(r) R.C.M. 806(b)(4) is renumbered as R.C.M. 806(b)(5).

(s) A new R.C.M. 806(b)(6) is inserted immediately after R.C.M. 806(b)(5) and reads as follows:

"(6) Right of victim to be reasonably protected from the accused. A victim of an alleged offense committed by the accused has the right to be reasonably protected from the accused."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 806(b)(1) is amended and deletes a provision addressing exclusion of spectators, which is now addressed in R.C.M. 806(b)(2).

R.C.M. 806(b)(2) is amended and addresses exclusion of spectators.

R.C.M. 806(b)(3) is amended and addresses the right of the victim not to be excluded. The Discussion accompanying R.C.M. 806(b)(3) is amended and addresses additional matters pertaining to victims, and clarifies the meaning of the term “victim of an alleged offense” as it pertains to this rule.

R.C.M. 806(b)(4) and (6) are deleted and the subject matter of those provisions is now addressed in a new R.C.M. 806(b)(3) and the accompanying Discussion.

R.C.M. 806(b)(5) is redesignated as R.C.M. 806(b)(4), and the accompanying Discussion is amended and updates cross-references.

R.C.M. 806(d) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5121 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 807. Oaths

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 808. Record of trial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 808 is amended and updates a cross-reference.

Rule 809. Contempt proceedings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, §§ 1(f)-(g), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

f. R.C.M. 809(b)(1) is amended by deleting the last sentence, which reads:

"In such cases, the regular proceedings shall be suspended while the contempt is disposed of."

g. R.C.M. 809(c) is amended to read as follows:

"(c) Procedure. The military judge shall in all cases determine whether to punish for contempt and, if so, what the punishment shall be. The military judge shall also determine when during the court-martial the contempt proceedings shall be conducted; however, if the court-martial is composed of members, the military judge shall conduct the contempt proceedings outside the members' presence. The military judge may punish summarily under subsection (b)(1) only if the military judge recites the facts for the record and states that they were directly witnessed by the military judge in the actual presence of the court-martial. Otherwise, the provisions of subsection (b)(2) shall apply."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 809(a) and (b) and the Discussion accompanying R.C.M. 809(a) are amended and reflect Article 48(a), as amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which uses the term "judicial officer." The use of the term

reflects that judges are not detailed to courts of inquiry, and that judges serving on the Court of Appeals for the Armed Forces and the Courts of Criminal Appeals are not "detailed" to those courts in the sense that military judges are "detailed" to courts-martial.

* * *

R.C.M. 809(d) is amended and reflects Article 48, as amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which provides for appellate review of contempt punishments when imposed by military judges and military magistrates.

R.C.M. 809(e) is amended and addresses when execution of a sentence of contempt begins to run or becomes effective and the permissible maximum punishments that may be imposed for contempt *See* Article 48, as amended by Section 542 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, 124 Stat. 4218 (2011), as further amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 809(f) is amended and reflects that judicial officers may exercise contempt authority and requires that a person held in contempt be informed of the procedures for review of a finding of contempt. *See* Article 48, as amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 810. Procedures for rehearings, new trials, other trials, and remands

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(a), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

a. R.C.M. 810(d) is amended to read as follows:

"(d) *Sentence limitations.*

(1) *In general.* Sentences at rehearings, new trials, or other trials shall be adjudged within the limitations set forth in R.C.M. 1003. Except as otherwise provided in subsection (d)(2) of this rule, offenses on which a rehearing, new trial, or other trial has been ordered shall not be the basis for an approved sentence in excess of or more severe than the sentence ultimately approved by the convening or higher authority following the previous trial or hearing, unless the sentence prescribed for the offense is mandatory. When a rehearing or sentencing is combined with trial on new charges, the maximum punishment that may be approved by the convening authority shall be the maximum punishment under R.C.M. 1003 for the offenses being reheard as limited above, plus the total maximum punishment under R.C.M. 1003 for any new charges of which the accused has been found guilty. In the case of an "other trial" no sentence limitations apply if the original trial was invalid because a summary or special court-martial improperly tried an offense involving a mandatory punishment or one otherwise considered capital.

(2) *Pretrial agreement.* If, after the earlier court-martial, the sentence was approved in accordance with a pretrial agreement and at the rehearing the accused fails to comply with the pretrial agreement, by failing to entera plea of guilty or otherwise, the approved sentence resulting at a rehearing of the affected charges and specifications may include any otherwise lawful punishment not in excess of or more serious than lawfully adjudged at the earlier court-martial."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 810(a)-(d) and the accompanying Discussions are amended and reflect Article 63, as added by Section 5327 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(i) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which addressed the limitations on sentences at rehearing's.

R.C.M. 810(f) is new and reflects Article 66(f)(3), as amended by Section 5330 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(j) and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), and reflects, but does not expand, current practice regarding *DuBay* hearings. *See United States v. DuBay,* 37 C.M.R. 411 (C.M.A. 1967).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(rrr)-(uuu), 88 Fed. Reg. 50678 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(rrr) R.C.M. 810(a)(4) is amended to read as follows:

"(4) *Additional charges.* A referral authority may refer additional charges for trial together with charges as to which a rehearing has been directed."

(sss) R.C.M. 810(a)(5) is amended to read as follows:

"(5) *Rehearing impracticable.* If a rehearing was authorized on one or more findings, the convening authority, or in cases referred by a special trial counsel, a special trial counsel, may dismiss the affected charges if the referral authority determines that a rehearing is impracticable. If the referral authority dismisses such charges, a rehearing may proceed on any remaining charges not dismissed by the referral authority."

(ttt) R.C.M. 810(f)(l) is amended to read as follows:

"(1) *In general.* A Court of Criminal Appeals may order a remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. A remand under this subsection is generally not appropriate to determine facts or investigate matters which could, through a party's exercise ofreasonable diligence, have been investigated or considered at trial. Such orders shall be directed to the Chief Trial Judge. The Judge Advocate General, or the Judge Advocate General's delegate, shall designate a general court-martial convening authority who shall provide support for the hearing. In cases which were referred by a special trial counsel, a special trial counsel designated under regulations prescribed by the Secretary concerned shall be notified of any remand."

(uuu) R.C.M. 810(f)(3) is amended to read as follows:

"(3) *Remand impracticable.* If the general court-martial convening authority designated under R.C.M. 810(f)(l) or, in cases which were referred by a special trial counsel, a special rial counsel determines that the remand is impracticable due to military exigencies or other reasons, a Government appellate attorney shall notify the Court of Criminal Appeals. Upon receipt of such notification, the Court of Criminal Appeals may take any action authorized by law that does not materially prejudice the substantial rights of the accused."

Rule 811. Stipulations

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 812. Joint and common trials

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 813. Announcing personnel of the courts-martial and the accused

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.) (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 813(a)(3) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of

2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(v), 88 Fed. Reg. 50557 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(v) R.C.M. 813(a) through (d) are amended to read as follows:

"(a) *Opening sessions*. Except as noted in subsection (d), when the court-martial is called to order for the first time in a case, the military judge shall ensure that the following is announced:

(1) The order, including any amendment, by which the court is convened;

(2) The name, rank, and unit or address of the accused;

(3) The name and rank of the military judge presiding;

(4) The names and ranks of the members, if any, who are present;

(5) The names and ranks of members who are absent, if presence of members is required

(6) The names and ranks (if any) of counsel who are present;

(7) The names and ranks (if any) of counsel who are absent; and

(8) The name and rank (if any) of any detailed court reporter.

(b) *Later proceedings*. When the court-martial is called to order after a recess or adjournment or after it has been closed for any reason, the military judge shall ensure that the record reflects whether all parties and members who were present at the time of the adjournment or recess, or at the time the court-martial closed, are present.

(c) *Additions, replacement, and absences of personnel*. Whenever there is a replacement of the military judge, any member, or counsel, either through the appearance of new personnel or personnel previously absent or through the absence of personnel previously present, the military judge shall ensure the record reflects the change and the reason for it.

(d) Under R.C.M. 813(a)(l), the name, grade, and position of the convening authority, with the exception of the Secretary concerned, the Secretary of Defense, or the President, shall be omitted from announcement during the opening session of the court-martial."

Rule 901. Opening session

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(f), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

> Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> f. R.C.M. 901(d)(4)(B) is amended by striking out "convening authority" and inserting in lieu thereof "authority who detailed the counsel".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 901(d)(2) and the Discussion accompanying R.C.M. 901(d)(3) are amended and reflect Article 27, as amended by Section 5186 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) which requires, to the greatest extent practicable, that at least one defense counsel in a capital case be learned in the law applicable to capital cases.
>
> R.C.M. 901(e) is amended and provides for the conduct of designated procedures without the members present, and to reflect the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the

National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 902. Disqualification of military judge

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(ccc), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ccc) R.C.M. 706(a), R.C.M. 706(c)(3)(A), R.C.M. 902(b)(2), R.C.M. 912(a)(l)(K), R.C.M. 1106(b), and R.C.M. 1112(c) are amended by changing "investigating officer" to "preliminary hearing officer".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 902(c)(1) is amended and reflects Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-

91, 131 Stat. 1283 (2017), which provides limited pre-referral authority to the military judge.

R.C.M. 902(c)(3) is deleted and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(vvv), 88 Fed. Reg. 50679 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(vvv) R.C.M. 902(b)(3) is amended to read as follows:

"(3) Where the military judge has been or will be a witness in the same case; is the accuser; has forwarded charges in the case with a personal recommendation as to disposition; has referred charges in the case; or, except in the performance of duties as military judge in a previous trial of the same or a related case, has expressed an opinion concerning the guilt or innocence of the accused."

Rule 902A. Application of sentencing rules [deleted]

The President promulgated the original version of this rule in the amendments made by Executive Order, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 902A is new and implements Section 5542 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which establishes effective dates for the amendments made by the Military Justice Act of 2016 and authorizes the President to prescribe regulations regarding applicable sentencing rules. R.C.M. 902A applies in cases where charges were referred to trial by court-martial after the effective date designated by the President for offenses allegedly committed both before and on or after the effective date. (Note, see text of Section 531(o), NDAA 2018).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(b), 88 Fed. Reg. 50702 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (b) R.C.M. 902A is deleted.

Rule 903. Accused's elections on composition of court-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(c), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. R.C.M. 903(c)(3) is amended by inserting "a request" after "or".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(h), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial . . . 903 shall apply only in cases in which arraignment has been completed on or after March 12, 1987." *Id.* § 5(c). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

h. R.C.M. 903 is amended --

(1) in subsection (b)(1) by inserting "or shall be made orally on the record" after "signed by the accused";

(2) in subsection (c)(1) --

(a) by striking out "receipt" and inserting in lieu thereof "notice";

(b) by striking out "timely written request" and inserting in lieu thereof "timely request"; and

(c) by inserting a comma after "enlisted accused"; and

(3) in subsection (c)(3) by striking out "written".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 903 and its accompanying Discussion are amended and reflect Article 25, as amended by Section 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which permits an accused to elect trial by military judge alone or by members, and, if the accused is enlisted, trial by a panel with at least one-third enlisted members or by an all-officer panel, and the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 904. Arraignment

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 905. Motions generally

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(b), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: The amendment shall apply only in cases in which arraignment has been completed on or after April 1, 1990. *See id.* § 5(b).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> b. R.C.M. 905(e) is amended to read as follows:

"(e) *Effect of failure to raise defenses or objections.* Failure by a party to raise defenses or objections or to make motions or requests which must be made before pleas are entered under subsection (b) of this rule shall constitute waiver. The military judge for good cause shown may grant relief from the waiver. Other motions, requests, defenses, or objections, except lack of jurisdiction or failure of a charge to allege an offense, must be raised before the court-martial is adjourned for that case and, unless otherwise provided in this Manual, failure to do so shall constitute waiver."

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §1(c), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. R.C.M. 905(f) is amended to read as follows:

"(f) *Reconsideration.* On request of any party or sua sponte, the military judge may, prior to authentication of the record of trial, reconsider any ruling, other than one amounting to a finding of not guilty, made by the military judge.".

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(u), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 905 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 905 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(bbb) R.C.M. 705(c)(2)(E), R.C.M. 905(b)(l), and R.C.M. 906(b)(3) are amended by changing "Article 32 investigation" to "Article 32 preliminary hearing".

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1(u), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(u) R.C.M. 905(b)(l) is amended to read as follows:

"(1) Defenses or objections based on defects (other than jurisdictional defects) in the preferral, forwarding, or referral of charges, or in the preliminary hearing;"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

The Discussion accompanying R.C.M. 905(b)(3) and (4) and R.C.M. 905(d) is amended and cross-references are updated.

R.C.M. 905(e) is amended and clarifies the applicability throughout the Manual of the concepts of waiver and forfeiture.

R.C.M. 905(f) and the Discussion accompanying R.C.M. 905(d) are amended to reflect the requirement for an entry of judgment in special and general courts-martial and the elimination of authentication of the record of trial. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 905(h) is amended and authorizes the military judge to exercise his or her discretion to determine whether an Article 39(a) session is necessary for the resolution of a motion.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(www), 88 Fed. Reg. 50679 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(www) R.C.M. 905(e)(2) is amended to read as follows:

"(2) Other motions, requests, defenses, or objections, except lack of jurisdiction, must be raised before the court-martial is adjourned for that case. Failure to raise such other motions, requests, defenses, or objections shall constitute forfeiture, absent an affirmative waiver."

Rule 906. Motions for appropriate relief

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(x), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 906 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 906 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of September 16, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(x) R.C.M. 906(b)(8) is amended to read as follows:

"(8) Relief from pretrial confinement. Upon a motion for release from pretrial confinement, a victim of an alleged offense committed by the accused has the right to reasonable, accurate, and timely notice of the motion and any hearing, the right to confer with trial counsel, and the right to be reasonably heard. Inability to reasonably afford a victim these rights shall not delay the proceedings. The right to be heard under this rule includes the right to be heard through counsel."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(f), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(f) R.C.M. 906(b)(12) is amended to read as follows:

"(12) Unreasonable multiplication of charges. The military judge may provide a remedy, as provided below, if he or she finds there has been an unreasonable multiplication of charges as applied to findings or sentence.

(i) As applied to findings. Charges that arise from substantially the same transaction, while not legally multiplicious, may still be unreasonably multiplied as applied to findings. When the military judge finds, in his or her discretion, that the offenses have been unreasonably multiplied, the appropriate remedy shall be dismissal of the lesser offenses or merger of the offenses into one specification.

(ii) As applied to sentence. Where the military judge finds that the nature of the harm requires a remedy that focuses more appropriately on punishment than on findings, he or she may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding, the maximum punishment for those offenses determined to be unreasonably multiplied shall be the maximum authorized punishment of the offense carrying the greatest maximum punishment."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 906(b)(4) is amended and clarifies the provisions governing amendment of charges after referral.
>
> * * *
>
> R.C.M. 906(b)(10) is amended and addresses the standards applicable to severance of charges in capital and non-capital cases.
>
> R.C.M. 906(b)(12) and the accompanying Discussion are amended and clarify the remedies available to address findings of unreasonable multiplication of charges in light of the requirement for segmented sentencing by military judges. *See* Article 56, as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(xxx)-(cccc), 88 Fed. Reg. 50679 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (xxx) R.C.M. 906(b)(3) is amended to read as follows:
>
> "(3) *Corrections.* Correction of defects in the Article 32 preliminary hearing, pretrial advice, or a written determination by special trial counsel."
>
> (yyy) R.C.M. 906(b)(5) is amended to read as follows:

"(5) *Severance of specifications.* Severance of a duplicitous specification into two or more specifications."

(zzz) R.C.M. 906(b)(7) is amended to read as follows:

"(7) *Discovery and Production.* Discovery and production of evidence and witnesses."

(aaaa) R.C.M. 906(b)(9) is amended to read as follows:

"(9) *Severance of multiple accused.* Severance of multiple accused, if it appears that an accused or the Government is prejudiced by a joint or common trial. In a common trial, a

severance shall be granted whenever any accused, other than the moving accused, faces charges unrelated to those charged against the moving accused."

(bbbb) R.C.M. 906(b)(13) is amended to read as follows:

"(13) *Admissibility.* Preliminary ruling on admissibility of evidence."

(cccc) R.C.M. 906(b)(14) is amended to read as follows:

"(14) *Mental capacity or responsibility.* Motions relating to mental capacity or responsibility of the accused."

Amendment of July 28, 2023 (Annex 3)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(b), 88 Fed. Reg. 50702 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(c) R.C.M. 906(b)(12)(B) is amended to read 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(d)(2). A ruling on this motion ordinarily should be deferred until after findings are entered."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(x), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(x) R.C.M. 906(b)(12)(B) is amended to read 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 that the terms of confinement for the affected specifications will run concurrently, as set forth in R.C.M. 1002(b)(2)(B)(iii). A ruling on this motion ordinarily should be deferred until after findings are entered."

Rule 907. Motions to dismiss

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 305 as amended on May 20, 2016 and before its subsequent amendment. The version of R.C.M. 305 in M.C.M. (2016 ed.) contains both the amendment of May 20, 2016 and the amendment of September 16, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(v) R.C.M. 907(b)(l) is amended to read as follows:

"(1) Nonwaivable grounds. A charge or specification shall be dismissed at any stage of the proceedings if the court -martial lacks jurisdiction to try the accused for the offense."

(w) R.C.M. 907(b)(l)(A)-(B) is deleted.

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(g), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) R.C.M. 907(b)(3) is amended to read as follows:

"(3) Permissible grounds. A specification may be dismissed upon timely motion by the accused if one of the following is applicable:

(A) Defective. When the specification is so defective that it substantially misled the accused, and the military judge finds that, in the interest of justice, trial should proceed on any remaining charges and specifications without undue delay; or

(B) Multiplicity. When the specification is multiplicious with another specification, is unnecessary to enable the prosecution to meet the exigencies of proof through trial, review, and appellate action, and should be dismissed in the interest of justice. A charge is multiplicious if the proof of such charge also proves every element of another charge."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 907(b)(2)(C) and the accompanying Discussion are amended and reflect Article 44, as amended by Section 5226 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the point when jeopardy attaches in a court-martial.

R.C.M. 907(b)(2)(D)(iii) is deleted and R.C.M. 907(b)(2)(D)(iv) is redesignated as R.C.M. 907(b)(2)(D)(iii).

Rule 908. Appeal by the United States

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, §§ 1(i)-(j), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: These amendments "shall apply only to cases in which pretrial confinement is imposed on or after July 6, 1991." *Id.* § 4(e).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendments:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

i. R.C.M. 908(b)(4) is amended to read as follows:

"(4) Effect on the court-martial. Upon written notice to the military judge under subsection (b)(3) of this rule, the ruling or order that is the subject of the appeal is automatically stayed and no session of the court-martial may proceed pending disposition by the Court of Military Review of the appeal, except that solely as to charges and specifications not affected by the ruling or order:".

j. R.C.M. 908(b) is amended by inserting the following new subparagraph at the end thereof:

"(9) Pretrial confinement of accused pending appeal. If an accused is in pretrial confinement at the time the United States files notice of its intent to appeal under subsection (3) above, the commander, in determining whether the accused should be confined pending the outcome of an appeal by the United States, should consider the same factors which would authorize the imposition of pretrial confinement under R.C.M. 305(h)(2)(B)."

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(h), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

h. R.C.M. 908(a) is amended to read as follows:

"(a) In general. In a trial by a court-martial over which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling that terminates the proceedings with respect to a charge or specification, or excludes evidence that is substantial proof of a fact material in the proceedings, or directs the disclosure of classified information, or that imposes sanctions for nondisclosure of classified information. The United States may also appeal a refusal by the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information or to enforce such an order that has previously been issued by the appropriate authority. However, the United States may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 908(a) is amended and implements Article 62, as amended by Section 5326 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(h) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes a Government appeal when a military

judge sets aside a panel's guilty verdict. The Discussion accompanying R.C.M. 908(a) is new.

R.C.M. 908(b)(5) is amended and implements Article 54, as amended by Section 5238 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires the certification of the record of trial.

* * *

R.C.M. 908(d) of the M.C.M. (2016 edition) is deleted and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(dddd)-(ffff), 88 Fed. Reg. 50680 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(dddd) Rule 908(b)(6) is amended to read as follows:

"(6) *Forwarding.* Upon written notice to the military judge under R.C.M. 908(b)(3), the trial counsel shall promptly and by expeditious means forward the appeal to a representative of the Government designated by the Judge Advocate General. The matter forwarded shall include: a statement of the issues appealed; the record of the proceedings or, if preparation of the record has not been completed, a summary of the evidence; and such other matters as the Secretary concerned may prescribe."

(eeee) Rule 908(b)(7) is amended to read as follows:

"(7) *Appeal filed.*

(A) In cases over which a special trial counsel exercises authority, the decision to appeal shall be made by:

(i) if within the Department of Defense, a Lead Special Trial Counsel; or

(ii) if within the Coast Guard, a special trial counsel designated under regulations by the Secretary concerned.

(B) For all other cases, the person designated by the Judge Advocate General shallpromptly decide whether to file the appeal with the Court of Criminal Appeals and notify trial counsel of that decision.

(C) If the United States elects to file an appeal, it shall be filed directly with the Court of Criminal Appeals, in accordance with the rules of that court.

(D) In all cases, a representative of the Government designated by the Judge Advocate General will be responsible for the substance and content of submissions to the Court of Criminal Appeals. For appeals in cases over which a special trial counsel exercises authority, the designated representative of the Government will consult with the special trial counsel who authorized the appeal or that special trial counsel's designee concerning the substance and content of appellate filings."

(ffff) R.C.M. 908(c)(3) is amended to read as follows:

"(3) *Action following decision of Court of Criminal Appeals.* After the Court of Criminal Appeals has decided any appeal under Article 62, the accused may petition for review by the Court of Appeals for the Armed Forces, or the Judge Advocate General may certify a case to the Court of Appeals for the Armed Forces. The parties shall be notified of the decision of the Court of Criminal Appeals promptly. If the decision is adverse to the accused, the accused shall be notified of the decision and of the right to petition the Court of Appeals for the Armed Forces for review within 60 days. Such notification shall be made orally on the record at the court-martial or in accordance with R.C.M. 1203(d). If the accused is notified orally on the record, trial counsel shall forward by expeditious means a certificate that the accused was so notified to the Judge Advocate General, who shall forward a copy to the clerk of the Court of Appeals for the Armed Forces when required by the Court. If the decision by the Court of Criminal Appeals permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals. If the case is reviewed by the Court of Appeals for the Armed Forces, R.C.M. 1204 and 1205 shall apply.

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(y), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 22, 2024. *See id.* § 4 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(y) R.C.M. 908(c)(3) is amended to read as follows:

"(3) Action following decision of Court of Criminal Appeals. After the Court of Criminal Appeals has decided any appeal under Article 62, the accused may petition for review by the Court of Appeals for the Armed Forces, or the Judge Advocate General may certify a case to the Court of Appeals for the Armed Forces. The parties shall be notified of the decision of the Court of Criminal Appeals promptly. If the decision is adverse to the accused, the accused shall be notified of the decision and of the right to petition the Court of Appeals for the Armed Forces for review within 60 days. Such notification shall be made orally on the record at the court-martial or in accordance with R.C.M. 1203(d). If the accused is notified orally on the record, trial counsel shall forward by expeditious means a certificate that the accused was so notified to the Judge Advocate General who shall forward a copy to the clerk of the Court of Appeals for the Armed Forces when required by the Court. If the decision by the Court of Criminal Appeals permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. R.C.M. 1204 shall apply to petitions made, or cases certified, under R.C.M. 908 to the Court of Appeals for the Armed Forces. R.C.M. 1205 shall apply to petitions made under R.C.M. 908 to the Supreme Court."

Rule 909. Capacity of the accused to stand trial by court-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(d), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

d. R.C.M. 909 is amended --

(1) by amending subsection (a) to read as follows:

"(a) In general. No person may be brought to trail by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case.";

(2) in subsection (b) by striking out "appears" and inserting in lieu thereof "is established"; and

(3) by amending subsection (c)(2) to read as follows:

"(2) Standard. Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense of the case.".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(i), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

i. R.C.M. 909 is amended to read as follows:

“(a) In general. No person may be brought to trial by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against them or to conduct or cooperate intelligently in the defense of the case.

(b) Presumption of capacity. A person is presumed to have the capacity to stand trial unless the contrary is established.

(c) Determination before referral. If an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, he or she shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then he or she shall commit the accused to the custody of the Attorney General. If the general court-martial convening authority does not

concur, that authority may take any action that he or she deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(d) Determination after referral. After referral, the military judge may conduct a hearing to determine the mental capacity of the accused, either sua sponte or upon request of either party. If an inquiry pursuant to R.C.M. 706 conducted before or after referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the military judge shall conduct a hearing to determine the mental capacity of the accused. Any such hearing shall be conducted in accordance with paragraph (e) of this rule.

(e) Incompetence determination hearing.

(1) Nature of issue. The mental capacity of the accused is an interlocutory question of fact.

(2) Standard. Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case. In making this determination, the military judge is not bound by the rules of evidence except with respect to privileges.

(3) If the military judge finds the accused is incompetent to stand trial, the judge shall report this finding to the general court-martial convening authority, who shall commit the accused to the custody of the Attorney General.

(f) Hospitalization of the accused. An accused who is found incompetent to stand trial under this rule shall be hospitalized by the Attorney General as provided in section 4241(d) of title 18, United States Code. If notified that the accused has recovered to such an extent that he or she is able to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense of the case, then the general court-martial convening authority shall promptly take custody of the accused. If, at the end of the period of hospitalization, the accused's mental condition has not so improved, action shall be taken in accordance with section 4246 of title 18, United States Code.

(g) Excludable delay. All periods of commitment shall be excluded as provided by R.C.M. 707(c). The 120-day time period under R.C.M. 707 shall begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment."

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(w), 88 Fed. Reg. 50558 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(w) R.C.M. 909(c) is amended to read as follows:

"(c) *Determination before referral*.

(1) If an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders the accused mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, the convening authority shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then he or she shall commit the accused to the custody of the Attorney General. If the general court-martial convening authority does not concur, that authority may take any action that the authority deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(2) Upon request of the Government or the accused, a military judge may conduct a hearing to determine the mental capacity of the accused in accordance with R.C.M. 309 and subsection (e) of this rule at any time prior to referral."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(gggg)-(hhhh), 88 Fed. Reg. 50682 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(gggg) R.C.M. 909(c) is revised to read as follows:

"(c) *Determination before referral.*

(1) For offenses over which special trial counsel has not exercised authority or has deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, the convening authority shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then the general court-martial convening authority shall

commit the accused to the custody of the Attorney General. If the general court-martial convening authority does not concur, that authority may take any action that he or she deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(2) For offenses over which special trial counsel has exercised authority and has not deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the general court-martial convening authority may disagree with the conclusion and notify special trial counsel who may take any action authorized under R.C.M. 401A, including referral of charges. If the general court-martial convening authority concurs with the conclusion, that authority shall notify special trial counsel and commit the accused to the custody of the Attorney General.

(3) Upon request of the Government or the accused, a military judge may conduct a hearing to determine the mental capacity of the accused in accordance with R.C.M. 309 and R.C.M. 909(e) at any time prior to referral."

(hhhh) R.C.M. 909(g) is amended to read as follows:

"(g) *Excludable delay.* All periods of commitment shall be excluded as provided by R.C.M. 707(c). The 120-day time period under R.C.M. 707 shall begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment. For offenses over which a special trial counsel has exercised authority and not deferred, the general court-martial convening authority shall immediately notify a special trial counsel in accordance with regulations prescribed by the Secretary concerned."

Rule 910. Pleas

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(h), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only to cases in which arraignment occurs on or after January 21, 1994." *Id.* § 4(d).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

h. R.C.M. 910(a)(1) is amended to read as follows:

"(1) *In general.* 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. A plea of guilty may not be received as to an offense for which the death penalty may be adjudged by the court-martial.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 910(a)(1) is amended and implements Article 45, as amended by Section 5227 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which permits a military judge to accept a guilty plea in a capital case except where death is the mandatory punishment. Although the 2016 Amendments eliminated the sentence of death as a mandatory punishment for any offense, the prohibition against accepting a guilty plea in a capital case where death is the mandatory punishment is retained.

* * *

R.C.M. 910(c)(1) and the accompanying Discussion are amended and reflect changes to plea agreements and the sentencing proceeding in courts-martial. *See* Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), as amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017); and Article 56, as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 910(c)(6) and the accompanying Discussion are new and reflect forum options for sentencing under the Military Justice Act of 2016. *See* Articles 53 and 56, as amended by Sections 5236 and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 910(f) and the accompanying Discussions are amended and reflect changes to plea agreement practice in the military as a result of the Military Justice Act of 2016. *See* Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 910(g) is amended and implements Articles 45 and 19, as amended by Sections 5227 and 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which removed the requirement for the Services to maintain separate rules authorizing entry of a finding of guilty without a vote when a guilty plea has been accepted and eliminated special courts-martial without a military judge.

R.C.M. 910(h) is amended by deleting paragraph (3) and reflects the manner in which the military judge addresses the plea agreement under R.C.M. 910(f).

R.C.M. 910(i) is deleted. The requirement for a certified record of guilty plea proceedings is governed by R.C.M. 1112, 1114 and 1305.

R.C.M. 910(j) is redesignated as 910(i) and reflects the application of plain-error review to errors concerning guilty pleas raised for the first time on appeal. *See* Article 45, as amended by Section 5227 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(x)-(y), 88 Fed. Reg. 50559 (Aug. 2, 2023).

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(x) A new R.C.M. 910(f)(8) is inserted immediately after R.C.M. 910(f)(7) to read as follows:

"(8) *Basis for rejecting a plea agreement*. The military judge of a general or special court-martial shall reject a plea agreement that—

(A) contains a provision that has not been accepted by both parties;

(B) contains a provision that is not understood by the accused;

(C) except as provided in Article 53a(c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in Article 56(b)(2);

(D) is prohibited by law; or

(E) is contrary to, or is inconsistent with, these rules with respect to the terms, conditions, or other aspects of plea agreements."

(y) R.C.M. 910U) is amended to read as follows:

"(j) Waiver. Except as provided in paragraph (a)(2) of this rule, a plea of guilty that results in a finding of guilty waives any objection, whether or not previously raised, as to the factual issue of guilt of the offense(s) to which the plea was made and any non-jurisdictional defect as to the offense(s) to which the plea was made that occurred prior to the plea."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(iiii), 88 Fed. Reg. 50683 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(iiii) R.C.M. 910(a) is amended to read as follows:

"(a) *Types of pleas.*

(1) *In general.* An accused may plead as follows:

(A) guilty;

(B) not guilty of an offense as charged, but guilty of a named lesser included offense;

(C) guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or (D) not guilty."

Rule 911. Assembly of the court-martial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(jjjj), 88 Fed. Reg. 50684 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(jjjj) R.C.M. 911 is amended to read as follows:

"Rule 911. Randomization and assembly of the court-martial panel

(a) Prior to assembly of the court-martial, at an open session of the court-martial, the military judge, or a designee thereof, shall randomly assign numbers to the members detailed by the convening authority.

(b) The military judge shall determine, after accounting for any excusals by the convening authority or designee, how many members detailed by the convening authority must be present at the initial session for which members are required. The required number of members shall be present, according to the randomly assigned order determined pursuant to R.C.M. 91 l(a). The military judge may temporarily excuse any member who has been detailed but is not required to be present.

(c) At the initial session for which members are required, the military judge shall cause the members who are present to be sworn, account on the record for any members who are temporarily excused, and then announce assembly of the court-martial.

(d) The military judge shall ensure any additional member is sworn at the first court session at which the member is present."

Rule 912. Challenge of selection of members; examination and challenges of members

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(o), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(o) R.C.M. 912(f)(4) is amended by deleting the fifth sentence and by inserting the following words immediately after the words "When a challenge for cause has been denied" in the fourth sentence:

"the successful use of a peremptory challenge by either party, excusing the challenged member from further participation in the court-martial, shall preclude further consideration of the challenge of that excused member upon later review. Further,"

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(y), (aaa), (ccc) Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 912 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 912 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(y) R.C.M. 912(i)(3) is amended to read as follows:

"(3) Preliminary hearing officer. For purposes of this rule, "preliminary hearing officer" includes any person who has examined charges under R.C.M. 405 and any person who was counsel for a member of a court of inquiry, or otherwise personally has conducted an investigation of the general matter involving the offenses charged."

* * *

(aaa) R.C.M. 603(b) and R.C.M. 912(f)(l)(F) are amended by changing "an investigating officer" to "a preliminary hearing officer".

* * *

(ccc) R.C.M. 706(a), R.C.M. 706(c)(3)(A), R.C.M. 902(b)(2), R.C.M. 912(a)(l)(K), R.C.M. 1106(b), and R.C.M. 1112(c) are amended by changing "investigating officer" to "preliminary hearing officer".

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(y)-(z), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(y) R.C.M. 912(a)(l)(K) is amended to read as follows:

"(K) Whether the member has acted as accuser, counsel, preliminary hearing officer, investigating officer, convening authority, or legal officer or staff judge advocate for the convening authority in the case, or has forwarded the charges with a recommendation as to disposition."

* * *

(z) R.C.M. 912(f)(1)(F) is amended to read as follows:

"(F) Has been an investigating or preliminary hearing officer as to any offense charged;"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 912(a)(1) is amended and reflects the authority of the convening authority to detail alternate members. *See* Article 29, as amended by Section 5187 the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

* * *

R.C.M. 912(b)(3) is amended and clarifies that failure to make a timely motion challenging the selection of the members shall forfeit, but not waive, the improper selection, except in specified circumstances where the failure to make a timely motion neither forfeits nor waives the improper selection.

R.C.M. 912(f)(4) is amended and implements Article 25, as amended by Section 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which eliminates the prohibition against detailing enlisted members from the same unit.

* * *

R.C.M. 912(f)(5) is new and addresses the assignment of random numbers to members following challenges for cause for the purpose of impaneling members and alternate members as set forth in R.C.M. 912A.

* * *

R.C.M. 912(h) of the M.C.M. (2016 edition) is deleted and R.C.M. 912(i) is redesignated as R.C.M. 912(h). This reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(kkkk)-(llll), 88 Fed. Reg. 50684 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(kkkk) R.C.M. 912(f)(5) is deleted.(llll) R.C.M. 912(g) is amended to read as follows:

"(g) *Peremptory challenges.*

(1) *Procedure.* Each party may challenge one member peremptorily. Any member so challenged shall be excused. No party may be required to exercise a peremptory challenge before the examination of members and determination of any challenges for cause have

been completed. Ordinarily, trial counsel shall enter any peremptory challenge before the defense. No member may be impaneled without being subject to peremptory challenge.

(2) *Additional Members.* If members not previously subject to peremptory challenge are required, the procedures in R.C.M. 912(g)(l) shall be followed with respect to such members.

(3) *Waiver.* Failure to exercise a peremptory challenge when properly called upon to do so shall waive the right to make such a challenge. The military judge may, for good cause shown, grant relief from the waiver, but a peremptory challenge may not be made after the presentation of evidence before the members has begun. However, nothing in this subsection shall bar the exercise of a peremptory challenge against a member newly detailed under R.C.M. 505(c)(2)(B), even if presentation of evidence on the merits has begun."

Rule 912A. Impaneling members and alternate members

The President promulgated the original version of this rule in the amendments made by Executive Order, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 912A is new and implements Articles 16, 25, and 29, as amended by Sections 5161, 5182, and 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), regarding the process for impaneling members after challenges for cause and peremptory challenges, and the process for impaneling alternate members if authorized by the convening authority. Article 16 was further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(z)-(aa), 88 Fed. Reg. 50560 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(z) R.C.M. 912A(a)(4)(A) is amended to read as follows:

"(A) If the convening authority authorizes the military judge to impanel a specific number of alternate members, the number of members impaneled shall be the number of members required under paragraphs (1), (2), or (3) of this subsection, as applicable, plus the number of alternate members specified by the convening authority. The military judge shall not impanel the court-martial until the specified number of alternate members has been identified. New members may be detailed in order to impanel the specified number of alternate members."

(aa) A new R.C.M. 912A(d)(3)(C) is inserted immediately after R.C.M. 912A(d)(3)(B) to read as follows:

"(C) In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the convening authority may instruct the military judge to prioritize impaneling a specific number of alternate enlisted members before impaneling alternate officer members. These members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 912(f)(5), after first identifying members under paragraph (1) of this subsection."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(mmmm), 88 Fed. Reg. 50685 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(mmmm) R.C.M. 912A is amended to read as follows:

"Rule 912A. Impaneling members and alternate members

(a) *In general.* After challenges for cause and peremptory challenges are exercised, the military judge of a general or special court-martial with members shall impanel the

members based on the order assigned in R.C.M. 91 l(a), and, if authorized by the convening authority, alternate members, in accordance with the following numerical requirements:

(1) *Capital cases.* In a general court-martial in which the charges were referred with a special instruction that the case be tried as a capital case, the number of members impaneled, subject to R.C.M. 912A(a)(4), shall be twelve.

(2) *General courts-martial.* In a general court-martial other than as described in R.C.M. 912A(a)(l), the number of members impaneled, subject to R.C.M. 912A(a)(4), shall be eight.

(3) *Special courts-martial.* In a special court-martial, the number of members impaneled, subject to R.C.M. 912A(a)(4), shall be four.

(4) *Alternate members.* A convening authority may authorize the military judge to impanel alternate members. When authorized by the convening authority, the military judge shall designate which of the impaneled members are alternate members in accordance with these rules and consistent with the instructions of the convening authority. Alternate members shall not be notified that they are alternate members until they are excused prior to deliberations on findings.

(A) If the convening authority authorizes the military judge to impanel a specific number of alternate members, the number of members impaneled shall be the number of members required under R.C.M. 912A(a)(l), (2), or (3), as applicable, plus the number of alternate members specified by the convening authority. The military judge shall not impanel the court-martial until the specified number of alternate members has been identified. New members may be detailed in order to impanel the specified number of alternate members.

(B) If the convening authority does not authorize the military judge to impanel a specific number of alternate members, and instead authorizes the military judge to impanel alternate members only if, after the exercise of all challenges, excess members remain, the number of members impaneled shall be the number of members required under R.C.M. 912A(a)(l), (2), or (3) and no more than three alternate members. New members shall not be detailed in order to impanel alternate members.

(b) *Enlisted accused.* In the case of an enlisted accused, the members shall be impaneled under R.C.M. 912A(a) in such numbers and proportion that—

(1) If the accused elected to be tried by a court-martial composed of at least one-third enlisted members, the membership of the panel includes at least one-third enlisted members; and

(2) If the accused elected to be tried by a court-martial composed of all officer members, the membership of the panel includes all officer members.

(c) *Number of members insufficient.*

(1) If, after challenges or excusals, the number of detailed members directed to be present by the military judge in accordance with R.C.M. 91l(b) is:

(A) fewer than the number of members required for the court-martial under R.C.M. 912A(a), the military judge shall, according to the randomly assigned order determined

pursuant to R.C.M. 91 l(a), determine how many additional detailed members are required and shall direct their presence for member examination in accordance with R.C.M. 912(d).

(B) fewer than the number of members required for the court-martial under R.C.M. 912A(b), the military judge shall, according to the randomly assigned order determined pursuant to R.C.M. 91 l(a), determine how many additional detailed enlisted members are required and shall direct their presence for member examination in accordance with R.C.M. 912(d).

(2) If, after challenges or excusals, the number of detailed members remaining is fewer than the number of members required for the court-martial under R.C.M. 912A(a) and (b), the convening authority shall detail new members under R.C.M. 503.

(d) *Impaneling members following the exercise of all challenges.* The military judge shall use the following procedures to identify the members who will be impaneled—

(1) In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the military judge shall:

(A) first identify the one-third enlisted members required under R.C.M. 912A(a) and (b) in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 91l(a); and

(B) then identify the remaining members required for the court-martial under R.C.M. 912A(a) and (b), in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 91 l(a).

(2) For all other panels, the military judge shall identify the number of members required under R.C.M. 912A(a) and (b) in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 91l(a).

(3) If the convening authority:

(A) Authorizes the military judge to impanel a specific number of alternate members, the specified number of alternate members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 91 l(a), after first identifying members under R.C.M. 912A(d)(l) or (2).

(B) Does not authorize the military judge to impanel a specific number of alternate members, and instead authorizes the military judge to impanel alternate members only if, after the exercise of all challenges, excess members remain, alternate members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 91 l(a), after first identifying the members under 912A(d)(l) or (2). The military judge shall identify no more than three alternate members.

(C) In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the convening authority may instruct the military judge to prioritize impaneling a specific number of alternate enlisted members before impaneling alternate officer members. These members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 91l(a), after first identifying members under 912A(d)(l).

(4) The military judge shall excuse any members not identified as members or alternate members, if any.

(e) *Lowest number.* The lowest number is the number with the lowest numerical value.

(f) *Announcement.* After identifying the members to be impaneled in accordance with this rule, and after excusing any excess members, the military judge shall announce that the members are impaneled."

Rule 912B. Excusal and replacement of members after impanelment

The President promulgated the original version of this rule in the amendments made by Executive Order, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 912B is new and implements Article 29, as amended by Section 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which prescribes the process by which impaneled members may be excused and replaced by alternate members or additionally detailed members.

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(nnnn)-(pppp), 88 Fed. Reg. 50689 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(nnnn) R.C.M. 912B(a) is amended to read as follows:

"(a) *In general.* Prior to the start of deliberations, a member who has been excused after impanelment shall be replaced in accordance with this rule. Alternate members excused after impanelment shall not be replaced."

(oooo) R.C.M. 912B(b) is amended to read as follows:

"(b) *Alternate members impaneled* Prior to the start of deliberations, an excused member shall be replaced with an impaneled alternate member. The alternate member with the lowest random number assigned pursuant to R.C.M. 91 l(a) shall replace the excused member, unless in the case of an enlisted accused, the use of such member would be inconsistent with the specific panel composition established under R.C.M. 903. Alternate members who have not replaced impaneled members prior to deliberations on findings shall be excused at the time the court closes for deliberations."

(pppp) A new R.C.M. 912B(d) is inserted immediately after R.C.M. 912B(c) to read as

follows:

"(d) *After the start of deliberations.* Once the military judge has closed the court for deliberations, if the number of members is reduced below the requirements of Article 29, trial may not proceed and the military judge shall declare a mistrial."

Rule 913. Presentation of the case on the merits

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(c), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. R.C.M. 913(a) is amended by inserting the following at the end thereof:

* * *

"If mixed pleas have been entered, the military judge shall ordinarily defer informing the members of the offenses to which the accused pleaded guilty until after the findings on the remaining contested offenses have been entered."

Rule 914. Production of statements of witnesses

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(bb), 88 Fed. Reg. 50560 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(bb) R.C.M. 914(e) is amended to read as follows:

"(e) *Remedy for failure to produce statement*. (1) Party refusal to comply. If the other party elects not to comply with an order to deliver a statement to the moving party, the military judge shall order that the testimony of the witness be disregarded by the trier of fact and that the trial proceed, or, if it is the trial counsel who elects not to comply, shall declare a mistrial if required in the interest of justice.

(2) *Exception*. In the event that the other party cannot comply with this rule because the statement is lost, and can prove, by a preponderance of evidence, that the loss of the witness statement was not attributable to bad faith or gross negligence, the military judge may exercise the sanctions set forth in paragraph (e)(1) of this rule only if—

(A) the statement is of such central importance to an issue that it is essential to a fair trial, and

(B) there is no adequate substitute for the statement."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(qqqq), 88 Fed. Reg. 50689 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA

FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(qqqq) R.C.M. 914(e)(l) is amended to read as follows:

"(1) *Party refusal to comply.* If the other party elects not to comply with an order to deliver a statement to the moving party, the military judge shall order that the testimony of the witness be disregarded by the trier of fact and that the trial proceed, or, if it is the Government that elects not to comply, shall declare a mistrial if required in the interest of justice."

Rule 914A. Use of remote live testimony of a child

The President promulgated the original version of this rule in the amendments made by Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999), described below:

Amendment of October 6, 1999

1. Source of the amendment: 1999 Amendments to the Manual for Courts-Martial, United States, § 1(c), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. Effective date of the amendment: November 1, 1999. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2000 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

c. The following new rule is inserted after R.C.M. 914:

"Rule 914A. Use of remote live testimony of a child

(a) General procedures. A child shall be allowed to testify out of the presence of the accused after the military judge has determined that the requirements of Mil. R. Evid. 611(d)(3) have been satisfied. The procedure used to take such testimony will be determined by the military judge based upon the exigencies of the situation. However, such testimony should normally be taken via a two-way closed circuit television system. At a minimum, the following procedures shall be observed:

(1) The witness shall testify from a remote location outside the courtroom;

(2) Attendance at the remote location shall be limited to the child, counsel for each side (not including an accused pro se), equipment operators, and other persons, such as an attendant for the child, whose presence is deemed necessary by the military judge;

(3) Sufficient monitors shall be placed in the courtroom to allow viewing and hearing of the testimony by the military judge, the accused, the members, the court reporter and the public;

(4) The voice of the military judge shall be transmitted into the remote location to allow control of the proceedings; and

(5) The accused shall be permitted private, contemporaneous communication with his counsel.

(b) Prohibitions. The procedures described above shall not be used where the accused elects to absent himself from the courtroom pursuant to R.C.M. 804(c)."

Amendment of April 18, 2007

1. Source of the amendment: 2007 Amendments to the Manual for Courts-Martial, United States, §1 (f),(g), Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007)

2. Effective date of the amendment: May, 18, 2007. *See id* at 8.

3. First publication of the amended rule: M.C.M. (2008 ed.)

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(f) R.C.M. 914A is amended by deleting the third sentence of paragraph (a).

(g) R.C.M. 914A is further amended by redesignating paragraph (b) as paragraph (c) and inserting the following new paragraph (b):

"(b) *Definition.* As used in this rule, "remote live testimony" includes, but is not limited to, testimony by videoteleconference, closed circuit television, or similar technology."

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(rrrr), 88 Fed. Reg. 50690 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The

President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(rrrr) R.C.M. 914A(b) is amended to read as follows:

"(b) *Definition.* As used in this rule, "remote live testimony" includes, but is not limited to, testimony by video teleconference, closed circuit television, or similar technology."

Rule 914B. Use of remote testimony

The President promulgated the original version of this rule in the amendments made by Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007), described below:

Amendment of April 18, 2007

1. Source of the amendment: 2007 Amendments to the Manual for Courts-Martial, United States, §1 (h), Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007).

2. Effective date of the amendment: *2. Effective date of the amendment*: May 18, 2007. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(h) New Rule R.C.M. 914B is inserted after R.C.M. 914A:

"Rule 914B. Use of remote testimony.

(a) General procedures. The military judge shall determine the procedures used to take testimony via remote means. At a minimum, all parties shall be able to hear each other, those in attendance at the remote site shall be identified, and the accused shall be permitted private, contemporaneous communication with his counsel.

(b) Definition. As used in this rule, testimony via "remote means" includes, but is not limited to, testimony by videoteleconference, closed circuit television, telephone, or similar technology."

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ssss), 88 Fed. Reg. 50690 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(ssss) R.C.M. 914B(b) is amended to read as follows:

"(b) *Definition.* As used in this rule, testimony via "remote means" includes, but is not limited to, testimony by video teleconference, closed circuit television, telephone, or similar technology."

Rule 915. Mistrial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 916. Defenses

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 1(e), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 184 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

e. R.C.M. 916(e)(3) is amended by striking out "(c)(1)" and inserting in lieu thereof "(e)(1)".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(i), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial . . . 916(b) [and] 916(k) . . . shall apply to any offense committed on or after November 14, 1986." *Id.* § 5(b). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

i. R.C.M. 916 is amended as follows:

(1) Subsection (b) is amended by striking out "Once" and inserting in lieu thereof "Except for the defense of lack of mental responsibility, once" and by inserting the following new sentence at the end thereof: "The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.";

(2) Subsection (e)(1) is amended to read as follows:

"(1) Homicide or assault cases involving deadly force. It is a defense to a homicide, assault involving deadly force, or battery involving deadly force that the accused:

"(A) Apprehended, on reasonable grounds, that death or grievous bodily harm was about to be inflicted wrongfully on the accused; and

"(B) Believed that the force the accused used was necessary for protection against death or grievous bodily harm.";

(3) Subsection (k)(1) is amended to read as follows:

"(1) Lack of mental responsibility. It is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense.";

(4) Subsection (k)(2) is amended to read as follows:

"(2) Partial mental responsibility. A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not a defense, nor is evidence of such a mental condition admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense."; and

(5) Subsection (k)(3)(A) is amended by striking out "some evidence to the contrary is admitted" and inserting in lieu thereof "the accused establishes, by clear and convincing evidence, that he or she was not mentally responsible at the time of the alleged offense".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, §§ 1(j)-(k), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

j. R.C.M. 916(b) is amended to read as follows:

"(b) Burden of proof. Except for the defense of lack of mental responsibility and the defense of mistake of fact as to age as described in Part IV, para. 45c.(2) in a prosecution for carnal knowledge, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist. The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence, and has the burden of proving mistake of fact as to age in a carnal knowledge prosecution by a preponderance of the evidence."

k. R.C.M. 916(j) is amended to read as follows:

"(j) Ignorance or mistake of fact.

(1) Generally. Except as otherwise provided in this subsection, it is a defense to an offense that the accused held, as a result of ignorance or mistake, an incorrect belief of the true circumstances such that, if the circumstances were as the accused believed them, the accused would not be guilty of the offense. If the ignorance or mistake goes to an element requiring premeditation, specific intent, willfulness, or knowledge of a particular fact, the ignorance or mistake need only have existed in the mind of the accused. If the ignorance or mistake goes to any other element requiring only general intent or knowledge, the ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. However, if the accused's knowledge or intent is immaterial as to an element, then ignorance or mistake is not a defense.

(2) Carnal knowledge. It is a defense to a prosecution for carnal knowledge that, at the time of the sexual intercourse, the person with whom the accused had sexual intercourse was at least 12 years of age, and the accused reasonably believed the person was at least 16 years of age. The accused must prove this defense by a preponderance of the evidence."

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(f), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(f) R.C.M. 916(k)(2) is amended to read as follows:

"(2) Partial mental responsibility. A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not an affirmative defense."

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(a)-(c), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M 916(b) is amended to read as follows.

"(b) Burden of proof.

(1) General rule. Except as listed below in paragraphs (2), (3), and (4), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(2) Lack of mental responsibility. The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) Mistake of fact as to age. In the defense of mistake of fact as to age as described in Part IV, para. 45a (o)(2) in a prosecution of a sexual offense with a child under Article 120, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence. After the accused meets his or her burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(4) Mistake of fact as to consent. In the defense of mistake of fact as to consent in Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual

contact, and Article 120(h), abusive sexual contact, the accused has the burden of proving mistake of fact as to consent by a preponderance of the evidence. After the defense meets its burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(b) R.C.M 916(j)(2) is amended to read as follows.

"(2) Child Sexual Offenses. It is a defense to a prosecution for Article 120(d), aggravated sexual assault of a child, Article 120(f), aggravated sexual abuse of a child, Article 120(i), abusive sexual contact with a child, or Article 120 (j), indecent liberty with a child that, at the time of the offense, the child was at least 12 years of age, and the accused reasonably believed the person was at least 16 years of age. The accused must prove this defense by a preponderance of the evidence."

(c) R.C.M. 916 (j) is amended by inserting new paragraph R.C.M (j)(3) after the Discussion section to R.C.M. 916(j)(2) as follows.

"(3) Sexual offenses. It is an affirmative defense to a prosecution for Article 120 (a), rape, Article 120 (c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact that the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 2(h)-(l), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(h) R.C.M. 916(b)(1) is amended to read as follows:

"(1) General rule. Except as listed below in paragraphs (2) and (3), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(i) R.C.M. 916(b)(3) is amended to read as follows:

"(3) Mistake of fact as to age. In the defense of mistake of fact as to age as described in Article 120b(d)(2) in a prosecution of a child sexual offense, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence."

(j) R.C.M. 916(b)(4)is deleted.

(k) R.C.M. 916(j)(2) is amended to read as follows:

"(2) Child Sexual Offenses. It is a defense to a prosecution for Article 120b(b), sexual assault of a child, and Article 120b(c), sexual abuse of a child, that, at the time of the offense, the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years. The accused must prove this defense by a preponderance of the evidence."

(1) R.C.M. 916(j)(3) is deleted.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 916(e)(3) and (5) and the Discussion accompanying R.C.M. 916(j) and R.C.M. 916(l)(2) are amended and reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of January 26, 2022

1. Source of the amendment: 2022 Amendments to the Manual for Courts-Martial, United States, Annex § 1(a) & (b), Exec. Order No. 14,062, 87 Fed. Reg. 4763 (Jan. 26, 2022).

2. Effective date of the amendment: January 26, 2022. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: This amendment does not yet appear in an edition of the MCM.

4. Text or summary of the amendment:

Section l. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 916(e)(3) is amended to read as follows:

"(3) Other assaults. It is a defense to any assault punishable under Article 89, 91, 128, or 128b and not listed in paragraphs (e)(l) or (2) of this rule that the accused:

(A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) Believed that the force that the accused used was necessary for protection against bodily harm, provided that the force used by the accused was less than force reasonably likely to produce death or grievous bodily harm."

(b) R.C.M. 916(e)(5) is amended to read as follows:

"(5) Defense of another. The principles of self-defense under paragraphs (e)(1) through (4) of this rule apply to defense of another. It is a defense to homicide, attempted homicide, assault with intent to kill, or any assault under Article 89, 91, 128, or 128b that the accused acted in defense of another, provided that the accused may not use more force than the person defended was lawfully entitled to use under the circumstances."

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(cc), 88 Fed. Reg. 50561 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(cc) R.C.M. 916(e)(2) is amended to read as follows:

"(2) *Certain aggravated offer-type assault cases*. It is a defense to aggravated assault that the accused:

(A) Apprehended, on reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) In order to deter the assailant, offered but did not actually inflict or attempt to inflict substantial or grievous bodily harm."

Rule 917. Motion for finding of not guilty

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §1(d), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> d. R.C.M. 917(f) is amended to read as follows:
>
> "(f) Effect of ruling. A ruling granting a motion for a finding of not guilty is final when announced and may not be reconsidered. Such a ruling is a finding of not guilty of the affected specification, or affected portion thereof, and, when appropriate, of the corresponding charge. A ruling denying a motion for a finding of not guilty may be reconsidered at any time prior to authentication of the record of trial.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 917(a) is amended and allows a military judge to rule on a motion under R.C.M. 917 after a panel returns findings, similar to the practice in U.S. District Court. *See* Fed. R. Crim. P. 29; *United States v. Wilson*, 420 U.S. 332 (1975).
>
> * * *

R.C.M. 917(f) is amended and permits the military judge to reconsider a denial of a motion for a finding of not guilty at any time before entry of judgment. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016).

Rule 918. Findings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(j), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

j. R.C.M. 918(a) is amended --

(1) in subsection (1) by inserting "not guilty only by reason of lack of mental responsibility;" after "guilty of any Substitutions;"; and

(2) in subsection (2) by inserting "not guilty only by reason of lack of mental responsibility;" after "Article XX ;".

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(i), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only to cases in which arraignment occurs on or after January 21, 1994." *Id.* § 4(d).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

i. R.C.M. 918(a)(1) is amended to read as follows:

"(1) *As to a specification.* General findings as to a specification may be: guilty; not guilty of 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; not guilty only by reason of lack of mental responsibility; or, not guilty. Exceptions and substitutions may not be used to substantially change the nature of the offense or to increase the seriousness of the offense or the maximum punishment for it.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

The Discussion accompanying R.C.M. 918(a)(1) is amended and clarifies when the fact finder may consider a lesser included offense if the evidence fails to prove the offense charged. *See* Article 79, as amended by Section 5402 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 918(a)(2) Is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 918(b) is amended and requires the entry of special findings prior to the entry of judgment. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(tttt), 88 Fed. Reg. 50690 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(tttt) R.C.M. 918(a)(l)(B) is amended to read as follows:

"(B) not guilty of an offense as charged, but guilty of a lesser included offense;".

Rule 919. Argument by counsel on findings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 919(c) is amended and addresses the consequences of a failure to object to error in argument.

Rule 920. Instructions on findings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(f), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> f. R.C.M. 920(e)(2) is amended by inserting,“"unless trial of a lesser included offense is barred by the statute of limitations (Article 43) and the accused refuses to waive the ba”" after“"issu”".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(k), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial . . . 920 . . . shall apply to any offense committed on or after November 14, 1986." *Id.* § 5(b). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> k. R.C.M. 920(e)(5)(D) is amended by inserting the following at the end thereof:“"[When the issue of lack of mental responsibility is raised, add:] However, the burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused”".

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(j), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only to cases in which arraignment occurs on or after January 21, 1994." *Id.* § 4(d).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

j. R.C.M. 920(b) is amended to read as follows:

"(b) *When given.* Instructions on findings shall be given before or after arguments by counsel, or at both times, and before the members close to deliberate on findings, but the military judge may, upon request of the members, any party, or sua sponte, give additional instructions at a later time.".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(l), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

l. R.C.M. 920(e)(5)(D) is amended to read as follows:

"(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact as to age in a carnal knowledge prosecution is raised, add: The burden of proving the defense of mistake of fact as to age in carnal knowledge by a preponderance of the evidence is upon the accused.]"

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex § 1(d), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(d) R.C.M 920 (e)(5)(D) is amended to read as follows:

"(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) or (j)(3) is raised, add: The accused has the burden of proving the defense of mistake of fact as to consent or age by a preponderance of the evidence.]

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(m), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(m) R.C.M. 920(e)(5)(D) is amended to read as follows:""(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) is raised, add: The accused has the burden of proving the defense of mistake of fact as to age by a preponderance of the evidence."'

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 920(f) is amended and addresses the consequences of a failure to object to an instruction or the omission of an instruction.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(dd), 88 Fed. Reg. 50561 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (dd) A new R.C.M. 920(g) is inserted immediately after R.C.M. 920(1) to read as follows:
>
> "(g) *Waiver*. Instructions on a lesser included offense shall not be given when both parties waive such an instruction. After receiving applicable notification of those lesser included offenses of which an accused may be convicted, the parties may waive the reading of a lesser included offense instruction. A written waiver is not required. The accused must affirmatively acknowledge that the accused understands the rights involved and affirmatively waive the instruction on the record. The accused's waiver must be made freely, knowingly, and intelligently. In the case of a joint or common trial, instructions on a lesser included offense shall not be given as to an individual accused when that accused and the Government agree to waive such an instruction."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(uuuu), 88 Fed. Reg. 50690 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (uuuu) R.C.M. 920(g) is amended to read as follows:

"(g) *Waiver*. Instructions on a lesser included offense shall not be given when both parties waive such an instruction. After receiving applicable notification of those lesser included offenses of which an accused may be convicted, the parties may waive a lesser included offense instruction. A written waiver is not required. The accused must affirmatively acknowledge that the accused understands the rights involved and affirmatively waive the instruction on the record. The accused's waiver must be made freely, knowingly, and intelligently. In the case of a joint or common trial, instructions on a lesser included offense shall not be given as to an individual accused when that accused and the Government agree to waive such an instruction."

Rule 921. Deliberations and voting on findings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(g), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> g. R.C.M. 921(d) is amended by striking out "sentence" and inserting in lieu thereof "findings".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(l), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial . . . 921 . . . shall apply to any offense committed on or after November 14, 1986." *Id.* § 5(b). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

l. R.C.M. 921(c) is amended --

(1) by redesignating subsections (4) and (5) as (5) and (6) respectively; and (2) by inserting the following new subsection after subsection (3):

"(4) Not guilty only by reason of lack of mental responsibility. When the defense of lack of mental responsibility is in issue under R.C.M. 916(k)(1), the members shall first vote on whether the prosecution has proven the elements of the offense beyond a reasonable doubt. If at least two-thirds of the members present (all members for offenses where the death penalty is mandatory) vote for a finding of guilty, then the members shall vote on whether the accused has proven lack of mental responsibility. If a majority of the members present concur that the accused has proven lack of mental responsibility by clear and convincing evidence, a finding of not guilty only by reason of lack of mental responsibility results. If the vote on lack of mental responsibility does not result in a finding of not guilty only by reason of lack of mental responsibility, then the defense of lack of mental responsibility has been rejected and the finding of guilty stands.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 921(c) and the accompanying Discussion are amended and reflect Article 52, as amended by Section 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), concerning voting on findings in a non-capital case.

Rule 922. Announcement of findings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(h), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> h. R.C.M. 922(b) is amended --
>
> (1) by redesignating the second sentence as paragraph (1); and
>
> (2) by inserting the following new paragraph at the end thereof:
>
> "(2) In a capital case, if a finding of guilty is unanimous with respect to a capital offense, the president shall so state. This provision shall not apply during reconsideration under R.C.M. 924(a) of a finding of guilty previously announced in open court unless the prior finding was announced as unanimous."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 922(a) is amended and conforms to Article 53, as amended by Section 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).
>
> R.C.M. 922(b) and the accompanying Discussion are amended and conform to changes regarding the acceptance of guilty pleas by the military judge and the announcement of findings by the members.

Rule 923. Impeachment of findings

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 924. Reconsideration of findings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(m), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial . . . 922 [apparently should be "924" because the executive order does not amend R.C.M. 922—Ed.] shall apply to any offense committed on or after November 14, 1986." *Id.* § 5(b). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> m. R.C.M. 924(b) is amended by inserting the following new sentence before the last sentence thereof: "Any finding of not guilty only by reason of lack of mental responsibility shall be reconsidered on the issue of the finding of guilty of the elements if more than one-third of the members vote for reconsideration, and on the issue of mental responsibility if a majority vote for reconsideration.".

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(b)-(c), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:
>
> * * *
>
> b. R.C.M. 924(a) is amended to read as follows:
>
> "(a) Time for reconsideration. Members may reconsider any finding reached by them before such finding is announced in open session."
>
> c. R.C.M. 924(c) is amended to read as follows:
>
> "(c) Military judge sitting alone. In a trial by military judge alone, the military judge may reconsider any finding of guilty at any time before announcement of sentence and may reconsider the issue of the finding of guilty of the elements in a finding of not guilty only by reason of lack of mental responsibility at any time before announcement of sentence or authentication of the record of trial in the case of a complete acquittal."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 924(b) is amended and implements Article 52, as amended by Section 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which reflects the changes in voting requirements. The subsection is also amended and reflects the elimination of any provisions imposing a mandatory death penalty.
>
> R.C.M. 924(c) is amended and reflects the requirement for an entry of judgment and the elimination of authentication of the record of trial. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(vvvv), 88 Fed. Reg. 50690 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(vvvv) R.C.M. 924(c)(2) is amended to read as follows:

"(2) the issue of the finding of guilty of the elements in a finding of not guilty only by reason of lack of mental responsibility at any time before announcement of sentence or, where there was no finding of guilty, entry of judgment."

Rule 925. Application of sentencing rules

The President promulgated this rule in Executive Order No. 14103, Annex 3 § 1(c), 88 Fed. Reg. 50535, 50702 (Aug. 2, 2023). An edition of the M.C.M. containing the rule is forthcoming. The President has not amended the rule.

Rule 1001. Presentencing procedure

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(i), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

i. R.C.M. 1001 is amended --

(1) in subsection (b)(1) by striking out "age, pay," and inserting in lieu thereof "pay"; and

(2) in subsection (b)(3)(B) by striking out "65(c)" and inserting in lieu thereof "64".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(n), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

n. R.C.M. 1001(b)(2) is amended by striking out "all those records" in the second paragraph and inserting in lieu thereof "any records".

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §1(e), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

e. R.C.M. 1001(b)(5) is amended to read as follows:

"(5) Evidence of rehabilitative potential. Rehabilitative potential refers to the accused's potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society.

(A) In general. The trial counsel may present, by testimony or oral deposition in accordance with R.C.M. 702(g)(1), evidence in the form of opinions concerning the accused's previous performance as a servicemember and potential for rehabilitation.

(B) Foundation for opinion. The witness or deponent providing opinion evidence regarding the accused's rehabilitative potential must possess sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority. Relevant information and knowledge include, but are not limited to, information and knowledge about the accused's character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense or offenses.

(C) Bases for opinion. An opinion regarding the accused's rehabilitative potential must be based upon relevant information and knowledge possessed by the witness or deponent, and must relate to the accused's personal circumstances. The opinion of the witness or deponent regarding the severity or nature of the accused's offense or offenses may not serve as the principal basis for an opinion of the accused's rehabilitative potential.

(D) Scope of opinion. An opinion offered under this rule is limited to whether the accused has rehabilitative potential and to the magnitude or quality of any such potential. A witness may not offer an opinion regarding the appropriateness of a punitive discharge or whether the accused should be returned to the accused's unit.

(E) Cross-examination. On cross-examination, inquiry is permitted into relevant and specific instances of conduct.

(F) Redirect. Notwithstanding any other provision in this rule, the scope of opinion testimony permitted on redirect may be expanded, depending upon the nature and scope of the cross-examination.".

Amendment of October 6, 1999

1. Source of the amendment: 1999 Amendments to the Manual for Courts-Martial, United States, § 1(d), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. Effective date of the amendment: November 1, 1999. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date); § 4(d) (providing also that the amendments made to R.C.M. 1001(b)(4) "shall only apply to offenses committed after 1 November 1999").

3. First publication of the amended rule: M.C.M. (2000 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

d. R.C.M. 1001(b)(4) is amended by inserting the following sentences between the first and second sentences:

"Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused's offense. In addition, evidence in aggravation may include evidence that the

accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(d), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 806(d) and 1001(b)(3)(A) shall only apply in cases in which arraignment has been completed on or after May 15, 2002." *Id.* § 6(b).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

d. R.C.M. 1001(b)(3)(A) is amended to read as follows:

"(A) In general. The trial counsel may introduce evidence of military or civilian convictions of the accused. For purposes of this rule, there is a "conviction" in a court-martial case when a sentence has been adjudged. In a civilian case, a "conviction" includes any disposition following an initial judicial determination or assumption of guilt, such as when guilt has been established by guilty plea, trial, or plea of nolo contendere, regardless of the subsequent disposition, sentencing procedure, or final judgment. However, a "civilian conviction" does not include a diversion from the judicial process without a finding or admission of guilt; expunged convictions; juvenile adjudications; minor traffic violations; foreign convictions; tribal court convictions; or convictions reversed, vacated, invalidated or pardoned because of errors of law or because of subsequently discovered evidence exonerating the accused.".

Amendment of April 18, 2007

1. Source of the amendment: 2007 Amendments to the Manual for Courts-Martial, United States, § 1(i), Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007).

2. Effective date of the amendment: May 18, 2007. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(i) R.C.M. 1001(e)(2)(D) is amended by deleting the "or" before "former testimony" and inserting ", or testimony by remote means" after "former testimony."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(z)-(aa), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(z) R.C.M. 1001(a)(1)(B) is amended to read as follows:

"(B) Victim's right to be reasonably heard. See R.C.M. 1001A."

(aa) R.C.M. 1001(a)(1)(C)-(G) are amended to read as follows:

"(C) Presentation by the defense of evidence in extenuation or mitigation or both. . .

(D) Rebuttal.

(E) Argument by trial counsel on sentence.

(F) Argument by defense counsel on sentence.

(G) Rebuttal arguments in the discretion of the military judge."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1001 is amended and implements Articles 25, 53 and 56, as amended by Sections 5182, 5236, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense

Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). R.C.M. 1001(b)(1), (b)(2), and (h) set forth the consequences for failure to object to matters presented by the prosecution or argument on sentence.

R.C.M. 1001(c) is new and incorporates R.C.M. 1001A of the M.C.M. (2016 edition).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(e)-(l), 88 Fed. Reg. 50703 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(e) R.C.M. 1001(a)(l) is amended to read as follows:

"(1) *Procedure.* After findings of guilty have been announced, the Government and defense may present matters pursuant to this rule to aid the court-martial in determining an appropriate sentence. Such matters shall ordinarily be presented in the following sequence:

(A) Presentation by the trial counsel of:

(i) service data relating to the accused taken from the charge sheet;

(ii) personal data relating to the accused and of the character of the accused's prior service as reflected in the personnel records of the accused.

(B) Crime victim's right to be reasonably heard.

(C) Presentation by the defense of evidence in extenuation or mitigation or both.

(D) Rebuttal.

(E) Argument by the trial counsel on sentence.

(F) Argument by the defense counsel on sentence.

(G) Rebuttal argument in the discretion of the military judge."

(f) R.C.M. 100l(b)(2) is amended to read as follows:

"(2) *Personal data and character of prior service of the accused*. Under regulations of the Secretary concerned, the trial counsel may obtain and introduce from the personnel records of the accused evidence of the accused's marital status; number of dependents, if any; and character of prior service. Such evidence includes copies of reports reflecting the past military efficiency, conduct, performance, and history of the accused and evidence of any

disciplinary actions, including punishments under Article 15 and summary courts-martial after review has been completed pursuant to Article 64. "Personnel records of the accused" includes any records made or maintained in accordance with departmental regulations that reflect the past military efficiency, conduct, performance, and history of the accused. If the accused objects to a particular document as inaccurate or incomplete in a specified respect, or as containing matter that is not admissible under the Military Rules of Evidence, the matter shall be determined by the military judge. Objections not asserted are forfeited."

(g) R.C.M. 100l(b)(3)(B) is amended to read as follows:

"(B) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible."

(h) R.C.M. 100l(b)(4) is amended to read as follows:

"(4) *Evidence in aggravation.* The trial counsel may present evidence as to any aggravating circumstance directly relating to or resulting from the offenses of which the accused has been found guilty. Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused's offense. In addition, evidence in aggravation may include evidence that the accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, sex (including pregnancy), gender (including gender identity), disability, or sexual orientation of any person. Except in capital cases, a written or oral deposition taken in accordance with R.C.M. 702 is admissible in aggravation."

(i) R.C.M. 1001(c) is amended to read as follows:

"(c) *Crime victim's right to be reasonably heard.*

(1) *In general.* After presentation by the trial counsel, a crime victim of an offense of which the accused has been found guilty has the right to be reasonably heard at the presentencing proceeding relating to that offense. A crime victim who makes an unswom statement under R.C.M. 1001(c)(5) is not considered a witness for the purposes of Article 42(b). If the crime victim exercises the right to be reasonably heard, the crime victim shall be called by the court-martial. The exercise of the right is independent of whether the crime victim testified during findings or is called to testify by the Government or defense under this rule.

(2) *Definitions.*

(A) *Crime victim.* For purposes of R.C.M. l00l(c), a crime victim is an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty or the individual's lawful representative or designee appointed by the military judge under these rules.

(B) *Victim impact.* For purposes of R.C.M. l00l(c), victim impact includes any financial, social, psychological, or medical impact on the crime victim relating to or arising from the offense of which the accused has been found guilty.

(C) *Mitigation.* For the purposes of R.C.M. l00l(c), mitigation includes any matter that may lessen the punishment to be adjudged by the court-martial or furnish grounds for a recommendation of clemency.

(D) *Right to be reasonably heard.*

(i) *Capital cases.* In capital cases, for purposes of R.C.M. 1001(c), the "right to be reasonably heard" means the right to make a sworn statement. The statement may not recommend a specific sentence.

(ii) *Noncapital cases.* In noncapital cases, for purposes of R.C.M. l00l(c), the "right to be reasonably heard" means the right to make a sworn statement, an unsworn statement, or both. This right includes the right to be heard on any objection to any unsworn statement.

(3) *Contents of statement.* The content of statements made under R.C.M. 1001(c)(4) or (5) may only include victim impact and matters in mitigation, except that, in a noncapital case, the victim may recommend a specific sentence.

(4) *Sworn statement.* The crime victim may make a sworn statement and shall be subject to cross-examination concerning it by the trial counsel and the defense counsel or examination on it by the court-martial.

(5) *Unsworn statement.* The crime victim may make an unsworn statement and may not be cross-examined by the trial counsel or the defense counsel or examined upon it by the court-martial. The Government or defense may, however, rebut any statements of fact therein. The unsworn statement may be oral, written, or both, and may be made by the crime victim, by counsel representing the crime victim, or both.

(j) R.C.M. 1001(f)(1) is amended to read as follows:

"(1) *In general.* During the presentencing proceedings, there shall be much greater latitude than on the merits to receive information by means other than testimony presented through the personal appearance of witnesses. During presentencing proceedings, a dispute as to the production of a witness at Government expense is a matter within the discretion of the military judge to resolve subject to the limitations in R.C.M. 1001(f)(2)."

(k) R.C.M. 1001(t)(2)(C) is amended to read as follows:

"(C) the other party refuses to enter into a stipulation containing the matters to which the witness is expected to testify, except in an extraordinary case when such a stipulation would be an insufficient substitute for the testimony;".

(I) R.C.M. 1001(h) is amended as follows:

"(h) *Argument.* After introduction of matters relating to the sentence under this rule, counsel for the Government and defense may argue for an appropriate sentence. The trial counsel may not in argument purport to speak for the convening authority or any other higher authority or refer to the views of such authorities or any policy directive relative to punishment or to any punishment or quantum of punishment greater than the court-martial may adjudge. The trial counsel may, however, recommend a specific lawful sentence and may also refer to the sentencing considerations set forth in R.C.M. 1002(f). Failure to object to improper argument before the military judge begins deliberations, or before the

military judge instructs the members on sentencing, shall constitute forfeiture of the objection."

Rule 1001A. Crime Victims and Presentencing [deleted]

The President promulgated the original version of this rule as one of the amendments made by Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015), described below:

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(bb), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(bb) A new rule, R.C.M. 1001A, is inserted immediately after R.C.M. 1001(g) and reads as follows: "Rule 1001A. Crime victims and presentencing

(a) In general. A crime victim of an offense of which the accused has been found guilty has the right to be reasonably heard at a sentencing hearing relating to that offense. A victim under this rule is not considered a witness for purposes of Article 42(b). Trial counsel shall ensure the victim is aware of the opportunity to exercise that right. If the victim exercises the right to be reasonably heard, the victim shall be called by the court-martial. This right is independent of whether the victim testified during findings or is called to testify under R.C.M. 1001.

(b) Definitions.

(1) Crime victim. For purposes of this rule, a "crime victim" is an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of any offense of which the accused was found guilty.

(2) Victim Impact. For the purposes of this rule, "victim impact" includes any financial, social, psychological, or medical impact on the victim directly relating to or arising from the offense of which the accused has been found guilty.

(3) Mitigation. For the purposes of this rule, "mitigation" includes a matter to lessen the punishment to be adjudged by the court-martial or to furnish grounds for a recommendation of clemency.

(4) Right to be reasonably heard.

(A) Capital cases. In capital cases, for purposes of this rule, the "right to be reasonably heard" means the right to make a sworn statement.

(B) Non-capital cases. In non-capital cases, for purposes of this rule, the "right to be reasonably heard" means the right to make a sworn or unsworn statement.

(c) Content of statement. The content of statements made under subsections (d) and (e) of this rule may include victim impact or matters in mitigation.

(d) Sworn statement. The victim may give a sworn statement under this rule and shall be subject to cross-examination concerning the statement by the trial counsel or defense counsel or examination on the statement by the court-martial, or all or any of the three. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the sworn statement may be made by the victim's designee appointed under R.C.M. 801(a)(6). Additionally, a victim under 18 years of age may elect to make a sworn statement.

(e) Unsworn statement. The victim may make an unsworn statement and may not be cross-examined by the trial counsel or defense counsel upon it or examined upon it by the court-martial. The prosecution or defense may, however, rebut any statements of facts therein. The unsworn statement may be oral, written, or both. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the unsworn statement may be made by the victim's designee appointed under R.C.M. 80l(a)(6). Additionally, a victim under 18 years of age may elect to make an unsworn statement.

(1) Procedure for presenting unsworn statement. After the announcement of findings, a victim who would like to present an unsworn statement shall provide a copy to the trial counsel, defense counsel, and military judge. The military judge may waive this requirement for good cause shown.

(2) Upon good cause shown, the military judge may permit the victim's counsel to deliver all or part of the victim's unsworn statement.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The new text did not include R.C.M. 1001A. The following summary of the changes to R.C.M. 1001 appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1001(c) is new and incorporates R.C.M. 1001A of the M.C.M. (2016 edition).

Rule 1002. Sentencing determination

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1(aa), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> (aa) R.C.M. 1002 is amended to read as follows:
>
> "(a) Generally. Subject to limitations in this Manual, the sentence to be adjudged is a matter within the discretion of the court-martial; except when a mandatory minimum sentence is prescribed by the code, a court-martial may adjudge any punishment authorized in this Manual, including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment.
>
> (b) Unitary Sentencing. Sentencing by a court-martial is unitary. The court-martial will adjudge a single sentence for all the offenses of which the accused was found guilty. A court-martial may not impose separate sentences for each finding of guilty, but may impose only a single, unitary sentence covering all of the guilty findings in their entirety."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

This rule and its accompanying Discussions amend R.C.M. 1002 of the M.C.M. (2016 edition) in its entirety and implement Articles 25, 53, 53a, and 56, as amended by Sections 5182, 5236, 5237, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides an accused the option to elect sentencing by members in lieu of sentencing by military judge in a general or special court-martial with a military judge and members; reflects that sentences adjudged by a military judge shall provide for segmented sentences of confinement and fines; and sets forth statutory guidance for determining an appropriate sentence. Article 53a was further amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Article 56 was further amended by Section 531(e) the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(m), 88 Fed. Reg. 50708 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(m) R.C.M. 1002 is amended to read as follows:

"Rule 1002. Sentencing determination

(a) *Generally.* Subject to limitations in this Manual, the sentence to be adjudged is a matter within the discretion of the court-martial. A court-martial may adjudge any punishment authorized in this Manual in order to achieve the purposes of sentencing under R.C.M. 1002(c), including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment except as outlined below.

(1) *Mandatory minimum.* Unless otherwise authorized, when a mandatory minimum sentence is prescribed by the UCMJ, the sentence for an offense shall include any punishment that is made mandatory by law for that offense. The sentence for an offense may not be greater than the maximum sentence established by law or by the President for that offense.

(2) *Parameters and criteria.*

(A) When an offense is subject to sentencing criteria, the military judge shall consider the applicable sentencing criteria in determining the sentence for that offense.

(B) When an offense is subject to sentencing parameters, the military judge shall sentence the accused for that offense within the applicable parameter, unless the military judge finds specific facts that warrant a sentence outside the applicable parameter. If the military judge imposes a sentence outside a sentencing parameter, the military judge shall include in the record a written statement of the factual basis for the sentence.

(3) If the military judge accepts a plea agreement with a sentence limitation, the court-martial shall sentence the accused in accordance with the limits established by the plea agreement. Subject to Article 53a(c), the military judge shall accept a plea agreement submitted by the parties, except that—

(A) in the case of an offense with a sentencing parameter, the military judge may reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable; and

(B) in the case of an offense for which there is no sentencing parameter, the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable.

(b) *Noncapital cases.* The military judge shall determine the sentence of a general or special court-martial in accordance with this subsection in all noncapital cases.

(1) *Segmented sentencing for confinement and fines.* The military judge at a general or special court-martial shall determine an appropriate term of confinement and fine, if applicable, for each specification for which the accused was found guilty. Subject to R.C.M. 1002(a), such a determination may include a term of no confinement or no fine when appropriate for the offense.

(2) *Special court-martial.* The military judge shall, in a special court-martial, to the extent necessary, reduce the total confinement to the maximum confinement authorized under R.C.M. 201(f)(2).

(3) *Unitary sentencing for other forms of punishment.* All punishments other than confinement or a fine available under R.C.M. 1003, if any, shall be determined as a single, unitary component of the sentence, covering all of the guilty findings in their entirety. The military judge shall not segment those punishments among the guilty findings.

(c) *Imposition of sentence.* In sentencing an accused under this rule, the court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the United States Armed Forces, taking into consideration—

(1) the nature and circumstances of the offense and the history and characteristics of the accused;

(2) the impact of the offense on-

(A) the financial, social, psychological, or medical well-being of any victim of the offense; and

(B) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(3) the need for the sentence to—

(A) reflect the seriousness of the offense;

(B) promote respect for the law;

(C) provide just punishment for the offense;

(D) promote adequate deterrence of misconduct;

(E) protect others from further crimes by the accused;

(F) rehabilitate the accused; and

(G) provide, in appropriate cases, the opportunity for retraining and returning to

duty to meet the needs of the service; and

(4) the sentences available under these rules.

(d) *Information that may be considered*. The court-martial, in applying the factors listed in R.C.M. 1002(c) to the facts of a particular case, may consider—

(1) Any evidence admitted by the military judge during the presentencing proceeding under R.C.M. 1001; and

(2) Any evidence admitted by the military judge during the findings proceeding."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(z), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(z) R.C.M. 1002(b)(2) is amended to read as follows:

"(2) Concurrent or Consecutive Terms of Confinement.

(A) If a sentence includes more than one term of confinement, the military judge shall determine whether the terms of confinement will run concurrently or consecutively. For each term of confinement, the military judge shall state whether the term of confinement is to run concurrently or consecutively with any other term or terms of confinement.

(B) The terms of confinement for two or more specifications shall run concurrently—

(i) when each specification involves the same victim and the same act or transaction;

(ii) when provided for in a plea agreement;

(iii) when the accused is found guilty of two or more specifications and the military judge finds that the charges or specifications are unreasonably multiplied; or

(iv) in a special court-martial, to the extent necessary to prevent the total confinement from exceeding the maximum confinement authorized under R.C.M. 201(f)(2).

(C) In all other circumstances, a military judge may exercise broad discretion in determining whether terms of confinement will run concurrently or consecutively consistent with R.C.M. 1002(c). Whether a term of confinement will run concurrently with another term of confinement should be determined only after determining the appropriate amount of confinement for each charge and specification."

Rule 1003. Punishments

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(c), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

g. R.C.M. 1003(b) is amended by italicizing the headings of the paragraphs and subparagraphs thereof.

Amendment of February 19, 1986

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 1(j), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

j. R.C.M. 1003(b)(10)(B) is amended by inserting "Regardless of the maximum punishment specified for an offense in Part IV of this Manual, a dishonorable discharge may be adjudged for any offense of which a warrant officer who is not commissioned has been found guilty." after the first sentence.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(o), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "[T]he amendments made to Rules for Courts-Martial . . . 1003(c) . . . shall apply to any offense committed on or after March 12, 1987." *Id.* § 5(a). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

o. R.C.M. 1003(c) is amended --

(1) by redesignating subsection (3) as subsection (4); and

(2) by inserting the following new subsection after subsection (2):

"(3) Based on reserve status in certain circumstances.

"(A) Restriction on liberty. A member of a reserve component whose order to active duty is approved pursuant to Article 2(d)(5) may be required to serve any adjudged restriction on liberty during that period of active duty. Other members of a reserve component ordered to active duty pursuant to Article 2(d)(1) or tried by summary court-martial while on inactive duty training may not --

"(i) be sentenced to confinement; or

"(ii) be required to serve a court-martial punishment consisting of any other restriction on liberty except during subsequent periods of inactive-duty training or active duty.

"(B) Forfeiture. A sentence to forfeiture of pay of a member not retained on active duty after completion of disciplinary proceedings may be collected from active duty and inactive-duty training pay during subsequent periods of duty.".

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(d), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> d. R.C.M. 1003(b)(2) is amended by inserting in the third sentence
>
> * * *
>
> "or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training," after "basic pay".

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §1(f), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1003 as amended on November 10, 1994 before its subsequent amendment. The version of R.C.M. 1003 in M.C.M. (2005 ed.) contains both the amendment of November 10, 1994 and the amendment of May 12, 1995.

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> f. R.C.M. 1003(b)(2) is amended to read as follows:
>
> "(2) Forfeiture of pay and allowances. Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last. Allowances shall be subject to forfeiture only when the sentence includes forfeiture of all pay and allowances. The maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or

retainer pay, as applicable, or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or foreign duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced.".

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(d)-(e), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

d. R.C.M. 1003(b)(9) and the accompanying discussion are deleted.

e. R.C.M. 1003(b)(10), (11), and (12) are redesignated as subsections (9), (10), and (11), respectively.

Amendment of October 6, 1999

1. Source of the amendment: 1999 Amendments to the Manual for Courts-Martial, United States, § 1(e), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. Effective date of the amendment: November 1, 1999. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2000 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

e. R.C.M. 1003(b) is amended—

(1) by striking subsection (4) and

(2) by redesignating subsections (5), (6), (7), (8), (9), (10), and (11) as subsections (4), (5), (6), (7), (8), (9), and (10), respectively.

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, §§ 3(e)-(f), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 1003(b)(7), 1004(e), 1006(d)(4)(B), and 1009(e)(3)(B)(ii) shall only apply to offenses committed after November 18, 1997." *Id.* § 6(a).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

e. R.C.M. 1003(b)(3) is amended to read as follows:

"(3) Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

f. R.C.M. 1003(b)(7) is amended to read as follows:

"(7) Confinement. The place of confinement shall not be designated by the court-martial. When confinement for life is authorized, it may be with or without eligibility for parole. A court-martial shall not adjudge a sentence to solitary confinement or to confinement without hard labor;".

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(p), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(p) R.C.M. 1003(b)(2) is amended by replacing the word "foreign" with the word "hardship."

Amendment of August 31, 2010

1. Source of the amendment: 2010 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(a)-(b), Exec. Order No. 13,552, 75 Fed. Reg. 54,263 (Aug. 31, 2010).

2. Effective date of the amendment: September 30, 2010. *See id.* § 2 (providing that the amendments take 30 days after the date if the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 1003(b)(3) is amended to read as follows:

"(3) Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. In the case of a member of the armed forces, summary and special courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In the case of a person serving with or accompanying an armed force in the field, a summary court-martial may not adjudge a fine in excess of two-thirds of one month of the highest rate of enlisted pay, and a special court-martial may not adjudge a fine in excess of two-thirds of one year of the highest rate of officer pay. To enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

(b) R.C.M. 1003(c) is amended by renumbering subparagraph (4) as subparagraph (5) and adding a new subparagraph (4) to read as follows:

"(4) Based on status as a person serving with or accompanying an armed force in the field. In the case of a person serving with or accompanying an armed force in the field, no court-martial may adjudge forfeiture of pay and allowances, reduction in pay grade, hard labor without confinement, or a punitive separation."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 2(n), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(n) R.C.M. 1003(c)(1)(C) is amended to read as follows:

"(C) Multiple Offenses. When the accused is found guilty of two or more offenses, the maximum authorized punishment may be imposed for each separate offense, unless the military judge finds that the offenses are either multiplicious or unreasonably multiplied.

(i) Multiplicity. A charge is multiplicious and must be dismissed if the proof of such charge also proves every element of another charged offense.

(ii) Unreasonable Multiplication. If the military judge finds that there is an unreasonable multiplication of charges as applied to sentence, the maximum punishment for those offenses shall be the maximum authorized punishment for the offense carrying the greatest maximum punishment. The military judge may either merge the offenses for sentencing, or dismiss one or more of the charges."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1003(b)(2) is amended by adding the last sentence, which is consistent with *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987).

R.C.M. 1003(c)(1)(C) is amended and removes discussion of the available remedies for Multiplicity and Unreasonable Multiplication of Charges. Such remedies are addressed in R.C.M. 906(b)(12).

The discussion immediately following R.C.M. 1003(c)(1)(C) is replaced with language directing practitioners to R.C.M. 906(b)(12).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(ee)-(ff), 88 Fed. Reg. 50562 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(ee) R.C.M. 1003(b)(2) is amended to read as follows:

"(2) *Forfeiture of pay and allowances*. Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last. Allowances shall be subject to forfeiture only when the sentence includes forfeiture of all pay and allowances. The maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or retainer pay, as applicable, or, in the case of reserve component personnel on inactive duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or hardship duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced. Forfeitures of greater than two-thirds' pay per month may be imposed only during periods of confinement."

(ff) R.C.M. 1003(c)(2) is amended to read as follows:

"(2) *Based on grade of accused.*

(A) *Commissioned or warrant officers, cadets, and midshipmen*.

(i) A commissioned or warrant officer or a cadet or midshipman may not be reduced in grade by any court-martial. However, in time of war or national emergency, the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned, may commute a sentence of dismissal to reduction to any enlisted grade.

(ii) A commissioned or warrant officer or a cadet or midshipman may not be sentenced to hard labor without confinement.

(iii) Only a general court-martial, upon conviction of any offense in violation of the UCMJ, may sentence a commissioned or warrant officer or a cadet or midshipman to be separated from the service with a punitive separation. In the case of commissioned officers, cadets, midshipmen, and commissioned warrant officers, the separation shall be by dismissal. In the case of all other warrant officers, the separation shall be by dishonorable discharge.

(B) *Enlisted persons*. See paragraph (b)(9) of this rule and R.C.M. 130l(d)."

Amendment of July 28, 2023 (Annex 3)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(n)-(p), 88 Fed. Reg. 50710 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged

in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(n) R.C.M. 1003(b)(5) is amended to read as follows:

"(5) *Restriction to specified limits.* Restriction may be adjudged for no more than 2 months. Confinement and restriction may be adjudged in the same case, but they may not together exceed the maximum authorized period of confinement."

(o) R.C.M. 1003(c)(l)(A)(i) is amended to read as follows:

"(i) *Maximum punishment.* The maximum limits for the authorized punishments of confinement, forfeitures, and punitive discharge (if any) are set forth for each offense listed in Part IV of this Manual. These limitations are for each separate offense, not for each charge, and apply notwithstanding any applicable sentencing parameter. When a dishonorable discharge is authorized, a bad-conduct discharge is also authorized."

(p) R.C.M. 1003(c)(l)(B) is amended to read as follows:

"(B) *Offenses not listed in Part IV*

(i) *Included or closely related offenses.* For an offense not listed in Part IV of this Manual that is included in or closely related to an offense listed therein, the maximum punishment and the sentencing parameter or criteria shall be that or those of the offense listed; however, if an offense not listed is included in a listed offense, and is closely related to another or is equally closely related to two or more listed offenses, the maximum punishment and the sentencing parameter or criteria shall be the same as that or those of the least severe of the listed offenses.

(ii) *Not included or closely related offenses.* An offense not listed in Part IV and not included in or closely related to an offense listed therein is punishable as authorized by the United States Code or as authorized by the custom of the applicable service. When the United States Code provides for confinement for a specified period or not more than a specified period, the maximum punishment by court-martial shall include confinement for that period. If the period is 1 year or longer, the maximum punishment by court-martial also includes a dishonorable discharge and forfeiture of all pay and allowances; if the period is 6 months or more but less than 1 year, the maximum punishment by court-martial also includes a bad conduct discharge and forfeiture of all pay and allowances; if the period is less than 6 months, the maximum punishment by court-martial also includes forfeiture of two-thirds pay per month for the authorized period of confinement."

Rule 1004. Capital cases

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 1(k), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" but providing that "the amendments made in Rule for Courts-Martial 1004(c) shall apply in the trial of offenses committed on or after March 1, 1986").

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

k. R.C.M. 1004 is amended --

(1) by striking out "circumstance" and "circumstances" each time these words appear and inserting in lieu thereof "factor" and "factors", respectively;

(2) in subsection (a) by --

(A) striking out "and" at the end of paragraph (1); and

(B) redesignating paragraph (2) as paragraph (3) and inserting the following as paragraph (2):

"(2) The accused was convicted of such an offense by the concurrence of all the members of the court-martial present at the time the vote was taken; and";

(3) by amending subsection (b)(4) to read as follows:

"(4) Necessary findings. Death may not be adjudged unless --

"(A) The members find that at least one of the aggravating factors under subsection (c) existed;

"(B) Notice of such factor was provided in accordance with paragraph (1) of this subsection and all members concur in the finding with respect to such factor; and

"(C) All members concur that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under subsection (c) of this Rule.";

"(4) by amending subsection (c)(2) to read as follows:

"(2) That in committing the offense the accused --

"(A) Knowingly created a grave risk of substantial damage to the national security of the United States; or

"(B) Knowingly created a grave risk of substantial damage to a mission, system, or function of the United States, provided that this subparagraph shall apply only if substantial damage

to the national security of the United States would have resulted had the intended damage been effected;";

(5) in subsection (c)(4) by striking out "Article 120" and inserting in lieu thereof "Articles 104, 106a, or 120";

(6) in subsection (c)(7)(F) by --

(A) inserting "(including a Delegate to, or Resident Commissioner in, the Congress)" after "Member of Congress"; and

(B) striking out "or any judge of the United States." and inserting in lieu thereof "justice or judge of the United States, a chief of state or head of government (or the political equivalent) of a foreign nation, or a foreign official (as such term is defined in section 1116(b)(3)(A) of title 18, United States Code), if the official was on official business at the time of the offense and was in the United States or in a place described in Mil. R. Evid. 315(c)(2) or 315(c)(3);";

(7) in subsection (c)(9)(B) by striking out "or";

(8) in subsection (c)(10) by striking out the period and inserting "; or" in lieu thereof; and

(9) by inserting the following new subsection after subsection (c)(10):

"(11) That, only in the case of a violation of Article 104 or 106a:

"(A) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute; or

"(B) That in committing the offense, the accused knowingly created a grave risk of death to a person other than the individual who was the victim.".

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(k), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: These amendment "shall apply to any offense committed on or after July 6, 1991." *Id.* § 4(a).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

k. R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That, only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, sodomy, rape, robbery, or aggravated arson was major and who manifested a reckless indifference for human life;".

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 1(g)-(h), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> g. R.C.M. 1004(c)(4) is amended to read as follows:
>
> "(4) That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Article 104, 106a, or 120.".
>
> h. R.C.M. 1004(c)(7)(B) is amended to read as follows:
>
> "(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense.".
>
> i. R.C.M. 1004(c)(7)(I) is amended to read as follows:
>
> "(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, 'substantial physical harm' means fractures or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs or other serious bodily injuries. The term "substantial physical harm" does not mean minor injuries, such as a black eye or a bloody nose. The term "substantial mental or physical pain and suffering" is accorded its common meaning and includes torture.".

Amendment of October 6, 1999

1. Source of the amendment: 1999 Amendments to the Manual for Courts-Martial, United States, § 1(f), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. Effective date of the amendment: November 1, 1999. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date); § 4(d) (providing also that

the amendments made to R.C.M. 1004(c)(7) "shall only apply to offenses committed after 1 November 1999").

3. First publication of the amended rule: M.C.M. (2000 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

f. R.C.M. 1004(c)(7) is amended by adding at end the following new subsection:

"(K) The victim of the murder was under 15 years of age."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(g), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 1003(b)(7), 1004(e), 1006(d)(4)(B), and 1009(e)(3)(B)(ii) shall only apply to offenses committed after November 18, 1997." *Id.* § 6(a).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

g. R.C.M. 1004(e) is amended to read as follows:

"(e) Other penalties. Except for a violation of Article 106, when death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life, with or without eligibility for parole, and may be adjudged in lieu of the death penalty, subject to limitations specifically prescribed in this Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not a part of it."

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(q), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1004 as amended on October 14, 2005 and before its subsequent amendment. The version of

R.C.M. 1004 in M.C.M. (2008 ed.) contains both the amendment of October 14, 2005 and the amendment of September 28, 2007.

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(q) R.C.M. 1004(b) is amended by inserting the following after "(1) Notice." and before the word "Before":

"(A) Referral. The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided:

(i) that the convening authority has otherwise complied with the notice requirement of subsection (B); and

(ii) that if the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy.

(B) Arraignment."

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(e)-(f), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(e) R.C.M 1004(c)(7)(B) is amended to read as follows:

"(B) *The murder was committed:* while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

(f) R.C.M 1004 (c)(8) is amended to read as follows:

"(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 2(o)-(q), Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016).

2. Effective date of the amendment: September 16, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(o) R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, aggravated arson, forcible sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

(p) R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, forcible sodomy, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

(q) R.C.M. 1004(c)(9) is amended to read as follows:

"(9) That, in addition to the offense for which the accused is eligible for the death penalty, the accused has also been convicted of a sexual offense in which:

(A) Under Article 120b, the victim was under the age of 12; or

(B) Under Articles 120 or 120b, the accused maimed or attempted to kill the victim;"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1004(a)(2) is amended and implements Articles 45 and 52, as amended by Sections 5227 and 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 1004(b)(4) is amended and clarifies that the members must find unanimously that at least one of the aggravating factors under subsection (c) existed beyond a reasonable doubt before death may be adjudged.

R.C.M. 1004(b)(6) is amended and requires that the military judge instruct the members of the charges and specifications for which they shall determine a sentence, because the accused has the option to choose sentencing by members, rather than the military judge, for those charges and specifications for which death may not be adjudged, in accordance with R.C.M. 1002(b)(2).

R.C.M. 1004(b)(7) is amended and reflects the requirement that members must unanimously concur in a finding of the existence of at least one aggravating factor and unanimously find that the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances before a sentence of death may be considered.

R.C.M. 1004(c)(3) is amended and deletes the reference to Article 120.

R.C.M. 1004(c)(4) is amended and deletes the reference to Article 120 and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(c)(6) is amended and deletes the reference to Article 120.

R.C.M. 1004(c)(7)(B) is amended and adds the phrase "a separate murder, or" and deletes the reference to forcible sodomy and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National

Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(c)(8) is amended and deletes the reference to forcible sodomy and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(c)(9) is deleted.

R.C.M. 1004(c)(11) is amended and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(d) is deleted and subsection "(e)" is redesignated as subsection "(d)" and reflects the reorganization of the punitive articles and the removal of the mandatory death penalty for spying. *See* Section 5414 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)(eliminating mandatory death penalty for spying). *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(q), 88 Fed. Reg. 50712 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(q) R.C.M. 1004 is revised to read as follows:

"Rule 1004. Capital cases

(a) *In general.* In addition to the provisions in R.C.M. 1001, the provisions in this rule shall apply in capital cases. Death may be adjudged only when—

(1) Death is expressly authorized under Part IV of this Manual for an offense of which the accused has been found guilty or is authorized under the law of war for an offense of which the accused has been found guilty under the law of war;

(2) The accused was properly notified that the case would be tried as a capital case and was properly notified of the aggravating factors the Government intended to prove;

(3) The accused was convicted of such an offense by either—

(A) the unanimous vote of all twelve members of the court-martial; or

(B) the military judge pursuant to the accused's plea of guilty to such an offense;

(4) The members unanimously find that at least one of the aggravating factors under

R. C.M. 1004(c) existed beyond a reasonable doubt for that offense and notice of such factor was provided in accordance with R.C.M. 1004(b);

(5) The members unanimously find that the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, including any relevant aggravating factor(s); and

(6) The members unanimously determine that the sentence for that offense shall be death.

(b) *Notice.*

(1) *Referral.* The referral authority shall indicate that the case is to be tried as a capital case by including a special instruction on the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the referral authority from later adding the required special instruction, provided that—

(A) the referral authority has otherwise complied with the notice requirement of R.C.M. 1004(b)(2); and

(B) if the accused demonstrates specific prejudice from such failure to include the special instruction, the military judge determines that a continuance or a recess is an adequate remedy.

(2) *Arraignment.* Before arraignment, the trial counsel shall give the defense written notice of which specific aggravating factor(s) under R.C.M. 1004(c) the Government intends to prove and to which offense(s) the aggravating factor(s) apply. Failure to provide timely notice under this subsection of any aggravating factors under R.C.M. 1004(c) shall not bar later notice and proof of such additional aggravating factors unless the accused demonstrates specific prejudice from such failure and that a continuance or a recess is not an adequate remedy.

(c) *Aggravating factors.* The trial counsel may present evidence in accordance with R.C.M. 1001(b)(4) tending to establish one or more of the aggravating factors enumerated below. Death may be adjudged only if the members find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) That the offense was committed before or in the presence of the enemy, except that this factor shall not apply in the case of a violation of Article 118;

(2) That in committing the offense the accused—

(A) Knowingly created a grave risk of substantial damage to the national security of the United States; or

(B) Knowingly created a grave risk of substantial damage to a mission, system, or function of the United States, provided that this subparagraph shall apply only if substantial damage to the national security of the United States would have resulted had the potential damage been effected;

(3) That the offense caused substantial damage to the national security of the United States, regardless of whether the accused intended such damage, except that this factor shall not apply in case of a violation of Article 118;

(4) That the offense was committed in such a way or under such circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Articles 103a or 103b;

(5) That the accused committed the offense with the intent to avoid hazardous duty;

(6) That, only in the case of a violation of Article 118, the offense was committed in time of war and in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in active hostilities;

(7) That, only in the case of a violation of Article 118(1)—

(A) The accused was serving a sentence of confinement for 30 years or more or for life at the time of the murder;

(B) The murder was committed while the accused was engaged in the commission or attempted commission of a separate murder, or any robbery, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, aggravated arson, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any offense listed in this subparagraph (R.C.M. 1004(c)(7)(B)).

(C) The murder was committed for the purpose of receiving money or a thing of value;

(D) The accused procured another by means of compulsion, coercion, or a promise of an advantage, a service, or a thing of value to commit the murder;

(E) The murder was committed with the intent to avoid or to prevent lawful apprehension or effect an escape from custody or confinement;

(F) The victim was the President of the United States; the President-elect; the Vice President, or, if there was no Vice President, the next officer in the order of succession to the office of President of the United States; the Vice President-elect; any individual who is acting as President under the Constitution and laws of the United States; a Member of Congress (including a Delegate to, or Resident Commissioner in, the Congress) or Member of Congress elect; a justice or judge of the United States; a chief of state or head of

government (or the political equivalent) of a foreign nation; or a foreign official (as such term is defined in 18 U.S.C. § 1116(b)(3)(A)), if the official was on official business at the time of the offense and was in the United States or in a place described in Mil. R. Evid. 315(c)(2) or (c)(3);

(G) The accused then knew that the victim was any of the following persons in the execution of office: a commissioned, warrant, noncommissioned, or petty officer of the United States Armed Forces; a member of any law enforcement or security activity or agency, military or civilian, including correctional custody personnel; or any firefighter;

(H) The murder was committed with intent to obstruct justice;

(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, "substantial physical harm" means fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, or other serious bodily injuries. The term "substantial physical harm" does not mean minor injuries, such as a black eye or bloody nose. The term "substantial mental or physical pain and suffering" is accorded its common meaning and includes torture.

(J) The accused has been found guilty in the same case of another violation of Article 118;

(K) The victim of the murder was under 15 years of age;

(8) That, only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life.

(9) [Reserved]

(10) That, only in the case of a violation of the law of war, death is authorized under the law of war for the offense;

(11) That, only in the case of a violation of Article 103, 103a, or 103b—

(A) The accused has been convicted of another offense involving espionage, spying, or treason for which either a sentence of death or imprisonment for life was authorized by statute; or

(B) That in committing the offense, the accused knowingly created a grave risk of death to a person other than the individual who was the victim.

For purposes of R. C.M. 1004, "national security" means the national defense and foreign relations of the United States and specifically includes a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without.

(d) *Evidence in extenuation and mitigation.* The accused shall be given broad latitude to present evidence in extenuation and mitigation.

(e) *Basis for findings.* The findings specified by R.C.M. 1004(a)(4) and (a)(5) may be based on evidence introduced before or after findings under R.C.M. 921, or both.

(f) *Instructions.* Instructions shall be given after arguments by counsel and before the members close to deliberate on sentence, but the military judge may, upon request of the members, any party, or *sua sponte,* give additional instructions at a later time.

(1) *Requests for instructions.* During presentencing proceedings or at such other time as the military judge may permit, any party may request that the military judge instruct the members on the law as set forth in the request. The military judge may require the requested instruction to be written. Each party shall be given the opportunity to be heard on any proposed instruction before it is given. The military judge shall inform the parties of the proposed action on such requests before their arguments to the members.

(2) *How given.* Instructions shall be given orally on the record in the presence of all parties and the members. Written copies of the instructions or, unless a party objects, portions of them may also be given to the members for their use during deliberations.

(3) *Required instructions.* Instructions shall include—

(A) The charge(s) and specification(s) for which the members shall make a sentencing determination;

(B) The applicable aggravating factor or factors under R.C.M. 1004(c) and to which charge(s) and specification(s) the aggravating factor or factors apply;

(C) A statement of the procedures for deliberation and voting set out in R.C.M. 1004(g);

(D) A statement informing the members that they are solely responsible for selecting an appropriate determination and may not rely on the possibility of any mitigating action by the convening or higher authority;

(E) A statement that the members should consider all matters in aggravation, whether introduced before or after findings, and matters introduced under R.C.M. l00l(b)(l), (2), (3), and (5);

(F) A statement that the members may consider:

(i) Any evidence admitted by the military judge during the presentencing proceeding under R.C.M. 1001; and

(ii) Any evidence admitted by the military judge during the findings proceeding;

(G) A statement that the members shall consider all evidence in extenuation and mitigation before a sentence of death may be determined; and

(H) Such other explanations, descriptions, or directions that the military judge determines to be necessary, whether properly requested by a party or determined by the military judge *sua sponte*.

(4) *Failure to object.* After being afforded an opportunity to object, failure to object to an instruction or to omission of an instruction before the members close to deliberate shall constitute waiver of the objection. The military judge may require the party objecting to specify in what respect the instructions were improper. The parties shall be given the opportunity to be heard on any objection outside the presence of the members.

(g) *Deliberations and voting.*

(1) *In general.* With respect to each charge and specification for which a sentence of death may be determined, the members shall deliberate and vote after the military judge instructs the members. Only the members shall be present during deliberations and voting. Superiority in rank shall not be used in any manner to control the independence of members in the exercise of their judgment.

(2) *Deliberations.* Deliberations require a full and free discussion of the determination to be made in the case. Unless otherwise directed by the military judge, members may take with them in deliberations their notes, if any; any exhibits admitted in evidence; and any written instructions. Members may request that the court-martial be reopened and that portions of the record be read to them or additional evidence introduced. The military judge may, in the exercise of discretion, grant such requests.

(3) *Voting generally.*

(A) *Duty of members.* Each member has the duty to vote on the necessary findings described in R.C.M. 1004(a)(4)-(6) as applicable. No member may abstain from voting.

(B) *Secret ballot.* Voting shall be by secret written ballot.

(4) *Procedure.*

(A) *Initial process.* The members shall employ the following process for each charge and specification for which death may be determined.

(i) The members shall vote separately on each aggravating factor under R.C.M. 1004(c) that applies to the offense and on which the members have been instructed. The members shall not proceed to R.C.M. 1004(g)(4)(A)(ii) unless the members unanimously find that at least one of the aggravating factors existed beyond a reasonable doubt.

(ii) The members shall vote on whether the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, including any relevant aggravating factor(s) under R.C.M. 1004(c). The members shall not proceed to R.C.M. 1004(g)(4)(B) unless the members unanimously find that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances.

(B) *Voting on a sentencing determination if death may be adjudged.*

(i) If the members unanimously find both that at least one aggravating factor exists and that the extenuating and mitigating circumstances are substantially outweighed by the aggravating circumstances, the members shall vote on the following sentencing determinations, which shall be binding on the military judge. Except as permitted under R.C.M. 1004(i), the members must vote on potential sentence determinations in the order listed below. The members must vote on each option separately from the other option, considering only one option at a time. During the voting on a particular option, each member may cast one vote for or against that option. The order of the options to be considered is:

(I) Death; or

(II) Life in prison without eligibility for parole.

(ii) If all 12 members vote for death, the sentencing determination of the members shall be death. If any member does not vote for death, the sentencing determination of the members shall not be death.

(iii) If the members' initial vote does not reach the required unanimous consensus for death, the members shall vote on life in prison without eligibility for parole. If three-fourths or more of the members vote for life in prison without eligibility for parole, the sentencing determination of the members shall be life in prison without eligibility for parole. (iv) If the members' vote does not reach three-fourths for life in prison without eligibility for parole, the offense shall be returned to the military judge for imposition of a sentence of a lesser punishment in accordance with R.C.M. 1001.

(C) *Voting on a sentencing determination if death may not be adjudged*.

(i) If the members do not unanimously find that at least one aggravating factor exists or the members do not unanimously find that the aggravating circumstances substantially outweigh the extenuating and mitigating circumstances, the members shall vote on life in prison without eligibility for parole.

(ii) If the members' vote does not reach three-fourths for life in prison without eligibility for parole, the offense shall be returned to the military judge for imposition of a sentence of a lesser punishment in accordance with R.C.M. 1001.

(D) *Counting votes.* The junior member shall collect the ballots and count the votes. The president shall check the count and inform the other members of the result.

(h) *Action after a sentence is reached* After the members have agreed upon a determination by the required number of votes in accordance with this rule, the court-martial shall be opened, and the president shall inform the military judge that the members have reached a determination. The military judge may, in the presence of the parties, examine any writing used by the president to state the determination and may assist the members in putting the determination in proper form. If the members voted unanimously for a determination of death, the writing shall indicate which aggravating factor or factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. Neither that writing nor any oral or written clarification or discussion concerning it shall constitute announcement of the determination.

(i) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before it is announced in open session of the court.

(1) *Clarification of determination.* A sentence determination may be clarified at any time

before entry of judgment. When a determination by the members in a capital case 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 as soon as practicable after the ambiguity is discovered, or the military judge may resolve the ambiguity.

(2) *Action by the convening authority.*

(A) Prior to entry of judgment, if a convening authority becomes aware that the sentence of the court-martial is ambiguous, the convening authority shall return the matter to the

court-martial for clarification. When the sentence of the court-martial appears to be illegal, the convening authority shall return the matter to the court-martial for correction.

(B) Prior to entry of judgment in a case in which a special trial counsel has exercised authority

(i) if the special trial counsel becomes aware that the sentence of a court-martial is ambiguous, the special trial counsel shall make a binding determination that the convening authority return the matter to the court-martial for clarification; or

(ii) if the sentence of the court-martial appears to be illegal, the special trial counsel shall make a binding determination that the convening authority shall return the matter to the court-martial for correction.

(3) *Reconsideration procedure.* Any member of the court-martial may propose that a determination of the members in a capital case be reconsidered.

(A) *Instructions.* When reconsideration has been requested, the military judge shall instruct the members on the procedure for reconsideration.

(B) *Voting.* The members shall vote by secret written ballot in closed session whether to reconsider a determination.

(C) *Number of votes required for aggravatingfactors in capital cases.* Members may reconsider a unanimous vote under R.C.M. 1004(g)(4)(A) (i) that an aggravating factor was proven beyond a reasonable doubt if at least one member votes to reconsider. Members may reconsider a unanimous vote under R.C.M. 1004(g)(4)(A)(ii) that any extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under R.C.M. 1004(c), if at least one member votes to reconsider. In all other circumstances, a vote under R.C.M. 1004(g)(4)(A)(i) or (ii) may be reconsidered only if at least a majority of the members vote for reconsideration.

(D) *Number of votes required for determinations.*

(i) *With a view toward increasing.* Members may reconsider a determination with a view toward increasing the severity of the determination only if at least a majority votes for reconsideration. However, members may not reconsider a non-unanimous vote for a determination of death.

(ii) *With a view toward decreasing.* Members may reconsider a determination with a view toward decreasing the severity of the determination only if—

(I) In the case of a death determination, at least one member votes

to reconsider; or

(II) In the case of a determination of life in prison without eligibility for parole, more than one-fourth of the members vote to reconsider.

(E) *Successful vote.* If a vote to reconsider succeeds, the members will revote in accordance with R.C.M. 1001(g)(3) and (4).

(j) *Sentencing by military judge.*

(1) The military judge shall sentence the accused in accordance with the binding determination of the members under R.C.M. 1004(g). The military judge may include in any sentence to death or life in prison without eligibility for parole any other authorized lesser punishment. When the military judge's sentence includes confinement or fines, the military judge shall determine an appropriate term of confinement and fine for each specification for which the accused was found guilty.

(2) Where there is a finding of guilty for a specification for which death may be adjudged and a finding of guilty for a specification for which death may not be adjudged—

(A) The members shall make a determination for each specification for which death may be adjudged in accordance with subsection (g);

(B) The military judge shall determine the sentence for any specification returned by the members for sentencing of a lesser punishment than death or life in prison without eligibility for parole; and

(C) The military judge shall determine the sentence for all charges and specifications for which death may not be adjudged. If the sentence includes more than one term of confinement, the military judge shall determine whether the terms of confinement will run concurrently or consecutively.

(k) *Other penalties.* When death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life, with or without eligibility for parole, and may be adjudged in lieu of death, subject to limitations specifically prescribed in this Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not a part of it.

(l) *Impeachment of determination.* A determination that is proper on its face may be impeached only when extraneous prejudicial information was improperly brought to the attention of any member, outside influence was improperly brought to bear upon any member, or unlawful command influence was brought to bear upon any member."

Rule 1005. Instructions on sentence

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(m), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

m. R.C.M. 1005(e) is amended to read as follows:

"(e) Required Instructions. Instructions on sentence shall include:

(1) A statement of the maximum authorized punishment that may be adjudged and of the mandatory minimum punishment, if any;

(2) A statement of the effect any sentence announced including a punitive discharge and confinement, or confinement in excess of six months, will have on the accused's entitlement to pay and allowances;

(3) A statement of the procedures for deliberation and voting on the sentence set out in R.C.M. 1006;

(4) A statement informing the members that they are solely responsible for selecting an appropriate sentence and may not rely on the possibility of any mitigating action by the convening or higher authority; and

(5) A statement that the members should consider all matters in extenuation, mitigation, and aggravation, whether introduced before or after findings, and matters introduced under R.C.M. 1001(b)(1), (2), (3), and (5)."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1005(e)(6) is new and implements Article 56(c), as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1005(e)(7) is new and allows a military judge to provide additional instructions as may be required.

R.C.M. 1005(f) is amended and changes "waiver" to "forfeiture" when a party fails to object to an instruction or to omission of an instruction before the members close to deliberate on the sentence.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(r), 88 Fed. Reg. 50725 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(r) R.C.M. 1005 is amended to read as follows:

"Rule 1005. Reconsideration of sentence in noncapital cases

(a) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before such sentence is announced in open session of the court.

(b) *Exceptions.*

(1) If the sentence announced in open session was less than the mandatory minimum prescribed for an offense of which the accused has been found guilty, the court that announced the sentence may reconsider such sentence.

(2) If the sentence announced in open session exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial, the court that announced the sentence may reconsider such sentence.

(3) If the sentence announced in open session is not in accordance with a sentence limitation in the plea agreement, if any, the court that announced the sentence may reconsider such sentence.

(c) *Clarification of sentence.* A sentence may be clarified at any time before entry of judgment. When a sentence determined by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practicable after the ambiguity is discovered.

(d) *Action by the convening authority or special trial counsel.*

(1) Prior to entry of judgment, if a convening authority becomes aware that the sentence of the court-martial is ambiguous, the convening authority shall return the matter to the court-martial for clarification. When the sentence of the court-martial appears to be illegal, the convening authority shall return the matter to the court-martial for correction.

(2) Prior to entry of judgment in a case in which a special trial counsel has exercised authority—

(A) if the special trial counsel becomes aware that the sentence of a court-martial is ambiguous, the special trial counsel shall make a binding determination that the convening authority return the matter to the court-martial for clarification.

(B) if the sentence of the court-martial appears to be illegal, the special trial counsel shall make a binding determination that the convening authority shall return the matter to the court-martial for correction.

(e) *Limitation.* A military judge may reconsider a sentence once announced only under the circumstances described in R.C.M. 1005(b)."

Rule 1006. Deliberations and voting on sentence [Reserved]

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(h), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 1003(b)(7), 1004(e), 1006(d)(4)(B), and 1009(e)(3)(B)(ii) shall only apply to offenses committed after November 18, 1997." *Id.* § 6(a).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

h. R.C.M. 1006(d)(4)(B) is amended to read as follows:

"(B) Confinement for life, with or without eligibility for parole, or more than 10 years. A sentence that includes confinement for life, with or without eligibility for parole, or more than 10 years may be adjudged only if at least three-fourths of the members present vote for that sentence."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1006(a) is amended and implements Articles 25 and 53 as amended by Sections 5182 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).
>
> R.C.M. 1006(d)(4)(B) of the M.C.M. (2016 edition) is deleted and R.C.M. 1006(d)(4)(C) is redesignated as (d)(4)(B). This provision and its accompanying Discussion are amended and implement Article 52 as amended by Section 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).
>
> R.C.M. 1006(d)(6) is new and implements Art 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).
>
> R.C.M. 1006(e) is amended and implements Articles 52, 53, and 56 as amended by Sections 5235, 5236, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(s), 88 Fed. Reg. 50727 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (s) R.C.M. 1006 is amended to read as follows.

"Rule 1006. [Reserved]".

Rule 1007. Announcement of sentence

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1007(a) and its accompanying Discussion are amended and implement Article 53 as amended by Section 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).
>
> R.C.M. 1007(b) and its accompanying Discussion are amended and conform with changes made to R.C.M. 1002. This rule reflects the accused's right to elect member sentencing in lieu of military judge sentencing for non-capital offenses and the requirement for the military judge to announce the sentence promptly after it has been determined.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(t), 88 Fed. Reg. 50727 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(t) R.C.M. 1007(b)(l) is amended to read as follows:

"(1) In a capital case, the determination of the members shall be announced by the military judge. If the members voted unanimously for death, the military judge shall announce which aggravating factor or factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt."

Rule 1008. Impeachment of sentence

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(u), 88 Fed. Reg. 50727 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(u) R.C.M. 1008 is amended to read as follows:

"Rule 1008. Impeachment of sentence in noncapital cases

A sentence that is proper on its face may be impeached only when extraneous prejudicial information was improperly brought to the attention of the military judge, outside influence was improperly brought to bear upon the military judge, or unlawful command influence was brought to bear upon the military judge."

Rule 1009. Reconsideration of sentence [Reserved]

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(f), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

f. R.C.M. 1009 is amended to read as follows:

"(a) Reconsideration. Subject to this rule, a sentence may be reconsidered at any time before such sentence is announced in open session of the court.

(b) Exceptions.

(1) If the sentence announced in open session was less than the mandatory minimum prescribed for an offense of which the accused has been found guilty, the court that announced the sentence may reconsider such sentence after it has been announced, and may increase the sentence upon reconsideration in accordance with subsection (e) of this rule.

(2) If the sentence announced in open session exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial, the sentence may be reconsidered after announcement in accordance with subsection (e) of this rule.

(c) 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.

(d) Action by the convening authority. When a sentence adjudged by the court-martial is ambiguous, the convening authority may return the matter to the court-martial for clarification. When a sentence adjudged by the court-martial is apparently illegal, the convening authority may return the matter to the court-martial for reconsideration or may approve a sentence no more severe than the legal, unambiguous portions of the adjudged sentence.(When a sentence adjudged by the court-martial is apparently illegal, the

convening authority may return the matter to the court-martial for reconsideration or may approve a sentence no more severe than the legal, unambiguous portions of the adjudged sentence.

(e) Reconsideration procedure. Any member of the court-martial may propose that a sentence reached by the members be reconsidered.

(1) Instructions. When a sentence has been reached by members and reconsideration has been initiated, the military judge shall instruct the members on the procedure for reconsideration.

(2) Voting. The members shall vote by secret written ballot in closed session whether to reconsider a sentence already reached by them.

(3) Number of votes required.

(A) With a view to increasing. Subject to subsection (b) of this rule, members may reconsider a sentence with a view of increasing it only if at least a majority of the members vote for reconsideration.

(B) With a view to decreasing. Members may reconsider a sentence with a view to decreasing it only if:

(i) In the case of a sentence which includes death, at least one member votes to reconsider;

(ii) In the case of a sentence which includes confinement for life or more than 10 years, more than one-fourth of the members vote to reconsider; or

(iii) In the case of any other sentence, more than one-third of the members vote to reconsider.

(4) Successful vote. If a vote to reconsider a sentence succeeds, the procedures in R.C.M. 1006 shall apply."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(i), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 1003(b)(7), 1004(e), 1006(d)(4)(B), and 1009(e)(3)(B)(ii) shall only apply to offenses committed after November 18, 1997." *Id.* § 6(a).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

i. R.C.M. 1009(e)(3)(B)(ii) is amended to read as follows:

"(ii) In the case of a sentence which includes confinement for life, with or without eligibility for parole, or more than 10 years, more than one-fourth of the members vote to reconsider; or".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1009 and its accompanying Discussion are amended and implement Articles 52 and 53, as amended by Sections 5235 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding reconsideration of the sentence, including in a capital sentencing proceeding.

R.C.M. 1009(b)(3) is new and reflects the addition of Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(v), 88 Fed. Reg. 50727 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(v) R.C.M. 1009 is amended to read as follows:

"Rule 1009. [Reserved]".

Rule 1010. Notice concerning post-trial and appellate rights

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 1(l), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> l. R.C.M. 1010 is amended --
>
> (1) by striking out "ADVICE" and inserting in lieu thereof "NOTICE" in the rule title;
>
> (2) by striking out "(a) Advice." at the beginning of the rule;
>
> (3) by redesignating subsections (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and
>
> (4) by striking out subsection (b), "Inquiry", in its entirety.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(p), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *

p. R.C.M. 1010(c) is amended to read as follows:

"(c) The right to apply for relief from the Judge Advocate General if the case is neither reviewed by a Court of Military Review nor reviewed by the Judge Advocate General under R.C.M. 1201(b)(1); and".

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(l), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: These amendment "shall apply only to cases in which arraignment occurs on or after July 6, 1991." *Id.* § 4(d).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

1. R.C.M. 1010 is amended to read as follows:

"In each general and special court-martial, prior to adjournment, the military judge shall ensure that the defense counsel has informed the accused orally and in writing of:

a. The right to submit matters to the convening authority to consider before taking action;

b. The right to appellate review, as applicable, and the effect of waiver or withdrawal of such right;

c. The right to apply for relief from the Judge Advocate General if the case is neither reviewed by a Court of Military Review nor reviewed by the Judge Advocate General under R.C.M. 1201(b)(1); and

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

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."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1010 is amended and implements Articles 60a, 60b, 61, 64-67, and 69, as amended by Sections 5322, 5323, 5325, 5328, 5329, 5330, 5331, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding appellate procedure.
>
> The Discussion following R.C.M. 1010(d) is amended and corrects a cross-reference.

Rule 1011. Adjournment

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 1101. Statement of trial results

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, §§ 1(n)-(p), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> n. The heading for R.C.M. 1101 is amended as follows:
>
> "Rule 1101. Report of result of trial; post-trial restraint; deferment of confinement, forfeitures and reduction in grade; waiver of Article 58b forfeitures"
>
> o. R.C.M. 1101(c) is amended as follows:

"(c) Deferment of confinement, forfeitures or reduction in grade.

(1) In general. Deferment of a sentence to confinement, forfeitures, or reduction in grade is a postponement of the running of a sentence.

(2) Who may defer. The convening authority or, if the accused is no longer in the convening authority's jurisdiction, the officer exercising general court-martial 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.

(3) Action on deferment request. The authority acting on the deferment request may, in that authority's discretion, defer service of a sentence to confinement, forfeitures, or reduction in grade. The accused shall have the burden of showing that the interests of the accused and the community in deferral outweigh the community's interest in imposition of the punishment on its effective date. Factors that the authority acting on a deferment request may consider in determining whether to grant the deferment request include, where applicable: the probability of the accused's flight; the probability of the accused's commission of other offenses, intimidation of witnesses, or interference with the administration of justice; the nature of the offenses (including the effect on the victim) of which the accused was convicted; the sentence adjudged; the command's immediate need for the accused; the effect of deferment on good order and discipline in the command; the accused's character, mental condition, family situation, and service record. The decision of the authority acting on the deferment request shall be subject to judicial review only for abuse of discretion. The action of the authority acting on the deferment request shall be in writing and a copy shall be provided to the accused.

(4) Orders. The action granting deferment shall be reported in the convening authority's action under R.C.M. 1107(f)(4)(E) and shall include the date of the action on the request when it occurs prior to or concurrently with the action. Action granting deferment after the convening authority's action under R.C.M. 1107 shall be reported in orders under R.C.M. 1114 and included in the record of trial.

(5) Restraint when deferment is granted. When deferment of confinement is granted, no form of restraint or other limitation on the accused's liberty may be ordered as a substitute form of punishment. An accused may, however, be restricted to specified limits or conditions may be placed on the accused's liberty during the period of deferment for any other proper reason, including a ground for restraint under R.C.M. 304.

(6) End of deferment. Deferment of a sentence to confinement, forfeitures, or reduction in grade ends when:

(A) The convening authority takes action under R.C.M. 1107, unless the convening authority specifies in the action that service of confinement after the action is deferred;

(B) The confinement, forfeitures, or reduction in grade are suspended;

(C) The deferment expires by its own terms; or

(D) The deferment is otherwise rescinded in accordance with subsection (c)(7) of this rule. Deferment of confinement may not continue after the conviction is final under R.C.M. 1209.

(7) Rescission of deferment.

(A) Who may rescind. The authority who granted the deferment or, if the accused is no longer within that authority's jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned, may rescind the deferment.

(B) Action. Deferment of confinement, forfeitures, or reduction in grade may be rescinded when additional information is presented to a proper authority which, when considered with all other information in the case, that authority finds, in that authority's discretion, is grounds for denial of deferment under subsection (c)(3) of this rule. The accused shall promptly be informed of the basis for the rescission and of the right to submit written matters on the accused's behalf and to request that the rescission be reconsidered. However, the accused may be required to serve the sentence to confinement, forfeitures, or reduction in grade pending this action.

(C) Execution. When deferment of confinement is rescinded after the convening authority's action under R.C.M. 1107, the confinement may be ordered executed. However, no such order to rescind a deferment of confinement may be issued within 7 days of notice of the rescission of a deferment of confinement to the accused under subsection (c)(7)(B) of this rule, to afford the accused an opportunity to respond. The authority rescinding the deferment may extend this period for good cause shown. The accused shall be credited with any confinement actually served during this period.

(D) Orders. Rescission of a deferment before or concurrently with the initial action in the case shall be reported in the action under R.C.M. 1107(f)(4)(E), which action shall include the dates of the granting of the deferment and the rescission. Rescission of a deferment of confinement after the convening authority's action shall be reported in supplementary orders in accordance with R.C.M. 1114 and shall state whether the approved period of confinement is to be executed or whether all or part of it is to be suspended."

p. R.C.M. 101 ["101" should be "1101"—Ed.] is amended by adding the following new subparagraph (d):

"(d) Waiving forfeitures resulting from a sentence to confinement to provide for dependent support.

(1) With respect to forfeiture of pay and allowances resulting only by operation of law and not adjudged by the court, the convening authority may waive, for a period not to exceed six months, all or part of the forfeitures for the purpose of providing support to the accused's dependent(s). The convening authority may waive and direct payment of any such forfeitures when they become effective by operation of Article 57(a).

(2) Factors that may be considered by the convening authority in determining the amount of forfeitures, if any, to be waived include, but are not limited to, the length of the accused's confinement, the number and age(s) of the accused's family members, whether the accused requested waiver, any debts owed by the accused, the ability of the accused's family

members to find employment, and the availability of transitional compensation for abused dependents permitted under 10 U.S.C. 1059.

(3) For the purposes of this Rule, a "dependent" means any person qualifying as a "dependent" under 37 U.S.C. 401."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1101 ("Report of result of trial; post-trial restraint; deferment of confinement, forfeitures and reduction in grade; waiver of Article 58b forfeitures") of the M.C.M. (2016 edition) is deleted.

R.C.M. 1101 ("Statement of trial results") and its accompanying Discussion are new. R.C.M. 1101 implements Article 60, as amended by Section 5321 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the requirement that the military judge of a general or special court-martial enter into the record of trial a document entitled "Statement of Trial Results

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(gg), 88 Fed. Reg. 50563 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(gg) A new R.C.M. 1101(e) is inserted immediately after R.C.M. 1101(d) to read as follows:

"(e) *Modification*. The Statement of Trial Results may be modified as follows:

(1) The military judge may modify the Statement of Trial Results to correct any errors prior to certification of the record of trial under R.C.M. 1112.

(2) The Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Judge Advocate General or the Judge Advocate General's designee may modify the Statement of Trial Results in the performance of their duties and responsibilities.

(3) If a case is remanded to a military judge, the military judge may modify the Statement of Trial Results consistent with the purposes of the remand.

(4) Any modification to the Statement of Trial Results must be included in the record of trial."

Rule 1102. Execution and effective date of sentences

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(j), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

j. R.C.M. 1102(b)(2) is amended to read as follows:

"(2) 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."

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(g)-(i), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) R.C.M. 1102 (b)(2) is amended to read as follows:

"(2) Article 39(a) sessions. An Article 39(a) session under this rule may be called, upon motion of either party or sua sponte by the military judge, for the purpose of inquiring into, and, when appropriate, resolving any matter that arises after trial and that 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. The military judge may, sua sponte, at any time prior to authentication of the record of trial, enter a finding of not guilty of one or more offenses charged, or may enter a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification. Prior to entering such a finding or findings, the military judge shall give each party an opportunity to be heard on the matter in a post-trial Article 39(a) session."

(h) R.C.M 1102(d) is amended by deleting the last phrase of the second sentence, which reads:

", except that no proceeding in revision may be held when any party of the sentence has been ordered executed".

(1) R.C.M. 1102(e)(2) is amended by inserting the following sentence after the last sentence in R.C.M 1102 (e)(2)

"Prior to the military judge sua sponte entering a finding of not guilty of one or more offenses charged or entering a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification, the military judge shall give each party an opportunity to be heard on the matter."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1102 ("Post-trial Sessions") of the M.C.M. (2016 edition) is deleted.
>
> R.C.M. 1102 ("Execution and effective date of sentences") and its accompanying Discussion are new. R.C.M. 1102 implements Articles 57 and 60-60c, as amended by Sections 5302, 5321, 5322, 5323 and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the execution and effective date of sentences.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(hh)-(ii), 88 Fed. Reg. 50563 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (hh) R.C.M. 1102(b)(l) is amended to read as follows:
>
> "(1) *Forfeiture*. Unless deferred under R.C.M. 1103 or suspended under R.C.M. 1107, that part of an adjudged sentence that includes forfeitures is executed and takes effect as follows:
>
> (A) *Generally*. Subject to subparagraph (B), if a sentence includes forfeitures in pay or allowances, or, if forfeiture is required by Article 58b, that part of the sentence shall take effect on the earlier of—
>
> (i) 14 days after the sentence is announced under R.C.M. 1007; or (ii) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.
>
> (B) *Accused Not in Confinement*. If an accused is not confined and is performing military duties, that portion of the sentence that provides for forfeiture of more than two-thirds' pay per month shall not be executed."
>
> (ii) A new R.C.M. 1102(b)(6) is inserted immediately after R.C.M. 1102(b)(5) to read as
>
> follows:
>
> "(6) *Reduction in Enlisted Grade*.
>
> (A) *Adjudged Reduction*. Unless deferred under R.C.M. 1103 or suspended under R.C.M. 1107, that part of an adjudged sentence that includes reduction in enlisted grade shall take effect on the earlier of—
>
> (i) 14 days after the sentence is announced under R.C.M. 1007; or

(ii) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(B) *Automatic Reduction*. An enlisted accused in a pay grade above E-1 whose sentence as set forth in the judgment of a court-martial includes a dishonorable or bad-conduct discharge, confinement, or hard labor without confinement may be reduced automatically to pay grade E-1 if permitted by, and under circumstances provided in, regulations prescribed by the Secretary concerned."

Rule 1102A Post-trial hearing for person found not-guilty only by reason of lack of mental responsibility [Deleted]

The President promulgated the original version of this rule in the amendments made by Executive Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998), described below:

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(q), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

q. The following new rule is added after R.C.M. 1102:

"Rule 1102A. Post-trial hearing for person found not guilty only by reason of lack of mental responsibility

(a) In general. The military judge shall conduct a hearing not later than forty days following the finding that an accused is not guilty only by reason of a lack of mental responsibility.

(b) Psychiatric or psychological examination and report. Prior to the hearing, the military judge or convening authority shall order a psychiatric or psychological examination of the accused, with the resulting psychiatric or psychological report transmitted to the military judge for use in the post-trial hearing.

(c) Post-trial hearing.

(1) The accused shall be represented by defense counsel and shall have the opportunity to testify, present evidence, call witnesses on his or her behalf, and to confront and cross-examine witnesses who appear at the hearing.

(2) The military judge is not bound by the rules of evidence except with respect to privileges.

(3) An accused found not guilty only by reason of a lack of mental responsibility of an offense involving bodily injury to another, or serious damage to the property of another, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another due to a present mental disease or defect. With respect to any other offense, the accused has the burden of such proof by a preponderance of the evidence.

(4) If, after the hearing, the military judge finds the accused has satisfied the standard specified in subsection (3) of this section, the military judge shall inform the general court-martial convening authority of this result and the accused shall be released. If, however, the military judge finds after the hearing that the accused has not satisfied the standard specified in subsection (3) of this section, then the military judge shall inform the general court-martial convening authority of this result and that authority may commit the accused to the custody of the Attorney General."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1102A ("Post-trial hearing for person found not guilty only by reason of lack of mental responsibility") of the M.C.M. (2016 edition) is deleted and its provisions are incorporated into R.C.M. 1105 without substantial amendment.

Rule 1103. Deferment of confinement, forfeitures, and reduction in grade; waiver of Article 58b forfeitures

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, §§ 1(e)-(f), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* § 5.

3. *First publication of the amended rule*: M.C.M. 1984 (Change 3 1990).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> e. R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:
>
> * * *
>
> "(i) Any part of the sentence adjudged exceeds six months confinement or other punishments which may be adjudged by a special court-martial; or".
>
> * * *
>
> f. R.C.M. 1103(e) is amended to read as follows:
>
> "(e) *Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings.* Notwithstanding subsections (b), (c), and (d) of this rule, if proceedings resulted in an acquittal of all charges and specifications or in a finding of not guilty only by reason of lack of mental responsibility 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."

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(m), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: July 6, 1991. *See id.* at §§ 4, 4(g), 4(i) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *

m. R.C.M. 1103(b)(2)(D) is amended by—

(1) redesignating clause (iv) as clause (v); and

(2) inserting the following new clause (iv) after clause (iii):

"(iv) The original dated, signed action by the convening authority."

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(k), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: The amendment "shall apply only in cases in which the sentence is adjudged on or after January 21, 1994." *Id.* § 4(d).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

k. R.C.M. 1103(g)(1)(A) is amended to read as follows:

"In general. In general and special courts-martial which require a verbatim transcript under subsections (b) or (c) of this rule and are subject to review by a Court of Military Review under Article 66, the trial counsel shall cause to be prepared an original and four copies of the record of trial. In all other general and special courts-martial the trial counsel shall cause to be prepared an original and one copy of the record of trial.".

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(g)-(i), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

g. R.C.M. 1103(b)(3)(L) is deleted.

h. R.C.M. 1103(b)(3)(M) and (N) are redesignated as subsections (L) and(M), respectively.

i. R.C.M. 1103(c)(2) is amended to read as follows:

"(2) Not involving a bad-conduct discharge. If the special court-martial resulted in findings of guilty but a bad-conduct discharge was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)-(F) and (I)-(M) of this rule shall apply."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, §§ 3(j)-(l), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

j. R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:

"(i) Any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than six months or other punishments that may be adjudged by a special court-martial; or".

k. R.C.M. 1103(c) is amended to read as follows:

"(c) Special courts-martial.

"(1) Involving a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months. The requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(D), and (b)(3) of this rule shall apply in a special court-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged.

"(2) All other special courts-martial. If the special court-martial resulted in findings of guilty but a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)–(F) and (I)–(M) of this rule shall apply.".

l. R.C.M. 1103(f)(1) is amended to read as follows:

"(1) Approve only so much of the sentence that could be adjudged by a special court-martial, except that a bad-conduct discharge, confinement for more than six months, or forfeiture of two-thirds pay per month for more than six months, may not be approved; or".

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(g), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) R.C.M. 1103(f)(2) is amended to read as follows:

"(2) 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 convening authority may not approve any sentence imposed at such a rehearing more severe than or in excess of that adjudged by the earlier court-martial."

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(c)-(f), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(c) R.C.M. 1103(b)(2)(B) is amended to read as follows:

"(B) Verbatim transcript required. Except as otherwise provided in subsection (j) of this rule, the record of trial shall include a verbatim transcript of all sessions except sessions closed for deliberations and voting when:"

(d) R.C.M. 1103(e) is amended to read as follows:

"(e) Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings; termination after findings. Notwithstanding subsections (b), (c), and (d) of this rule, if proceedings resulted in an acquittal of all charges and specifications or in a finding of not guilty only by reason of

lack of mental responsibility of all charges and specifications, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings, or if the proceedings were terminated after findings by approval of an administrative discharge in lieu of court-martial, 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."

(e) R.C.M. 1103(g)(1)(A) is amended to read as follows:

"(A) In general. In general and special courts-martial that require a verbatim transcript under subsections (b) or (c) of this rule and are subject to a review by a Court of Criminal Appeals under Article 66, the trial counsel shall cause to be prepared an original record of trial."

(f) R.C.M. 1103(j)(2) is amended to read as follows:

"(2) Preparation of written record. When the court-martial, or any part of it, is recorded by videotape, audiotape, or similar material under subsection (j)(1) of this rule, a transcript or summary in writing (as defined in R.C.M. 103), as required in subsection (b)(2)(A), (b)(2)(B), (b)(2)(C), or (c) of this rule, as appropriate, shall be prepared in accordance with this rule and R.C.M. 1104 before the record is forwarded under R.C.M. 1104(e), unless military exigencies prevent transcription."

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex §§ 1(l)-(m), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1103 as it was amended on June 13, 2014 and before its subsequent amendment. The version of R.C.M. 1103 in M.C.M. (2016 ed.) reflects the amendments of June 13, 2014 and June 17, 2015.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(l) R.C.M. 1103(b)(3) is amended by inserting new subsection (N) after R.C.M. 1103(b)(3)(M) as follows:

"(N) Documents pertaining to the receipt of the record of trial by the victim pursuant to subsection (g)(3) of this rule."

(m) R.C.M. 1103(g) is amended by inserting new subsection (3) after R.C.M. 1103(g)(2) as follows:

"(3) Cases involving sexual offenses.

(A) "Victim" defined. For the purposes of this rule, a victim is a person who suffered a direct physical, emotional, or pecuniary harm as a result of matters set forth in a charge or specification; and is named in a specification under Article 120, Article 120b, Article 120c, Article 125, or any attempt to commit such offense in violation of Article 80.

(B) Scope; qualifying victim. In a general or special court-martial, a copy of the record of trial shall be given free of charge to a victim as defined in subparagraph (A) for a specification identified in subparagraph (A) that resulted in any finding under R.C.M. 918(a)(1). If a victim is a minor, a copy of the record of trial shall instead be provided to the parent or legal guardian of the victim.

(C) Notice. In accordance with regulations of the Secretary concerned, and no later than authentication of the record, trial counsel shall cause each qualifying victim to be notified of the opportunity to receive a copy of the record of trial. Qualifying victims may decline receipt of such documents in writing and any written declination shall be attached to the original record of trial.

(D) Documents to be provided. For purposes of this subsection, the record of trial shall consist of documents described in subsection (b)(2) of this rule, except for proceedings described in subsection (e) of this rule, in which case the record of trial shall consist of items described in subsection (e). Matters attached to the record as described in subsection (b)(3) of this rule are not required to be provided."

(n) R.C.M. 1104(b)(1) is amended by inserting new subsection (E) after the Discussion section to R.C.M. 1104(b)(1)(D)(iii)(d) as follows:

"(E) Victims of Sexual Assault. Qualifying victims, as defined in R.C.M. 1103(g)(3)(A), shall be served a copy of the record of trial in the same manner as the accused under subsection (b) of this rule. In accordance with regulations of the Secretary concerned:

(i) A copy of the record of trial shall be provided to each qualifying victim as soon as it is authenticated or, if the victim requests, at a time thereafter. The victim's receipt of the record of trial, including any delay in receiving it, shall be documented and attached to the original record of trial.

(ii) A copy of the convening authority's action as described in R.C.M. 1103(b)(2)(D)(iv) shall be provided to each qualifying victim as soon as each document is prepared. If the victim makes a request in writing, service of the record of trial may be delayed until the action is available.

(iii) Classified information pursuant to subsection (b)(1)(D) of this rule, sealed matters pursuant to R.C.M. 1103A, or other portions of the record the release of which would unlawfully violate the privacy interests of any party, to include those afforded by 5 U.S.C. § 552a, the Privacy Act of 1974, shall not be provided. Matters attached to the record as described in R.C.M. 1103(b)(3) are not required to be provided."

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1(aa), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(bb) R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:

"(i) The sentence adjudged includes confinement for twelve months or more or any punishment that may not be adjudged by a special court-martial; or"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 1, § 1(h)-(m) & Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendments: The amendments to R.C.M. 1103(b) & (c), which were made in Annex 1, § 1(h)-(m), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date). The other amendments to R.C.M. 1103, which were made in Annex 2, § 2, took effect on January 1, 2019. *Id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 1, § 1(h)-(m), made the following amendment.

Section 1. Part II of the Manual for Courts-Martial, United States is amended as follows:

* * *

(h) The heading for R.C.M. 1103(b) is amended to read as follows:

"(b) General and special courts-martial."

(i) R.C.M. 1103(b)(2)(A) is amended to read as follows:

"(A) In general. The record of trial in each general and special court-martial shall be separate, complete, and independent of any other document."

(j) R.C.M. 1103(b)(3)(G) is amended to read as follows:

"(G) Any ~~The~~ post-trial recommendation of the staff judge advocate or legal officer and proof of service on defense counsel in accordance with R.C.M. 1106(f)(1);"

(k) R.C.M. 1103(b)(3)(H) is amended to read as follows:

"(H) Any response by defense counsel to any ~~the~~ post-trial review;"

(l) R.C.M. 1103(b)(3)(J) is amended to read as follows:

"(J) Any statement as to why it is impracticable for the convening authority to act;''

(m) R.C.M. 1103(c) is amended to read as follows:

"(c) [RESERVED] ~~Special courts-martial.~~

~~(1) Involving a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months. The requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(D), and (b)(3) of this rule shall apply in a special court-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged.~~

~~(2) All other special courts-martial. If the special court-martial resulted in findings of guilty but a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)-(F) and (I)-(M) of this rule shall apply.~~

Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1103 ("Preparation of record of trial") of the M.C.M. (2016 edition) as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), is deleted.
>
> R.C.M. 1103 ("Deferment of confinement, forfeitures, and reduction in grade; waiver of Article 58b forfeitures") and its accompanying Discussion are new. R.C.M. 1103 implements Article 57(b), as amended by Section 5302 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).
>
> R.C.M. 1103 also incorporates portions of R.C.M. 1101 and 1107 of the M.C.M. (2016 edition), regarding deferment of confinement, forfeitures, and reduction in grade, as well as waiver of Article 58b forfeitures.

Rule 1103A. Sealed exhibits and proceedings [Deleted]

The President promulgated the original version of this rule in the amendments made by Executive Order 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005), described below:

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(r), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.)

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(r) Insert the following new R.C.M. 1103A after R.C.M. 1103:

"Rule 1103A. Sealed exhibits and proceedings.

(a) In general. If the record of trial contains exhibits, proceedings, or other matter ordered sealed by the military judge, the trial counsel shall cause such materials to be sealed so as to prevent indiscriminate viewing or disclosure. Trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the military judge, and inserted at the appropriate place in the original record of trial. Copies of the record shall contain appropriate annotations that matters were sealed by order of the military judge and have been inserted in the original record of trial. This Rule shall be implemented in a manner consistent with Executive Order 12958, as amended, concerning classified national security information.

(b) Examination of sealed exhibits and proceedings. Except as provided in the following subsections to this rule, sealed exhibits may not be examined.

(1) Examination of sealed matters. For the purpose of this rule, "examination" includes reading, viewing, photocopying, photographing, disclosing, or manipulating the documents in any way.

(2) Prior to authentication. Prior to authentication of the record by the military judge, sealed materials may not be examined in the absence of an order from the military judge based on good cause shown.

(3) Authentication through action. After authentication and prior to disposition of the record of trial pursuant to Rule for Courts-Martial 1111, sealed materials may not be examined in the absence of an order from the military judge upon a showing of good cause at a post-trial Article 39a session directed by the Convening Authority.

(4) Reviewing and appellate authorities.

(A) Reviewing and appellate authorities may examine sealed matters when those authorities determine that such action is reasonably necessary to a proper fulfillment of their responsibilities under the Uniform Code of Military Justice, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility.

(B) Reviewing and appellate authorities shall not, however, disclose sealed matter or information in the absence of:

(i) Prior authorization of the Judge Advocate General in the case of review under Rule for Courts-Martial 1201(b); or

(ii) Prior authorization of the appellate court before which a case is pending review under Rules for Courts-Martial 1203 and 1204.

(C) In those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.

(D) The authorizing officials in paragraph (B)(ii) above may place conditions on authorized disclosures in order to minimize the disclosure.

(E) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to Rule for Courts-Martial 1112;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to Rule for Courts-Martial 1201(b);

(iii) Appellate government counsel;

(iv) Appellate defense counsel;

(v) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(vi) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(vii) The Justices of the United States Supreme Court and their professional staffs; and

(viii) Any other court of competent jurisdiction."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(cc)-(ee), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1103A as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 1103A in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(cc) R.C.M. 1103A(a) is amended to read as follows:

"(a) In general. If the report of preliminary hearing or record of trial contains exhibits, proceedings, or other matter ordered sealed by the preliminary hearing officer or military judge, counsel for the government or trial counsel shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure. Counsel for the government or trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the preliminary hearing officer or military judge, and inserted at the appropriate place in the original record of trial. Copies of the report of

preliminary hearing or record of trial shall contain appropriate annotations that matters were sealed by order of the preliminary hearing officer or military judge and have been inserted in the report of preliminary hearing or original record of trial. This Rule shall be implemented in a manner consistent with Executive Order 13526, concerning classified national security information."

(dd) R.C.M. 1103A(b)(l) is amended to read as follows:

"(1) Prior to referral. The following individuals may examine sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, the MCM, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; and the general court-martial convening authority."

(ee) R.C.M. 1103A(b)(5) is inserted immediately after R.C.M. 1103A(b)(4)(E)(viii) and reads as follows:

"(5) Examination of sealed matters. For the purpose of this rule, "examination" includes reading, viewing, photocopying, photographing, disclosing, or manipulating the sealed matters in any way."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 1, § 1(n) [Note: Annex 1, § 1 contains two paragraphs designated as (n)] & Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendments: The amendments to R.C.M. 1103A, which were made in Annex 1, § 1(n), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date). The deletion of R.C.M. 1103A, which was made in Annex 2, § 2, took effect on January 1, 2019. *Id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).3.

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 1, § 1(n), made the following amendment.

Section 1. Part II of the Manual for Courts-Martial, United States is amended as follows:

* * *

(n) R.C.M. 1103A is amended to read as follows:

Sealed exhibits ~~and~~, proceedings, and other materials.

(a) *In general.* If the report of preliminary hearing or record of trial contains exhibits, proceedings, or other ~~matter~~ materials ordered sealed by the preliminary hearing officer or

military judge, counsel for the ~~government,~~Government, the court reporter, or trial counsel shall cause such materials to be sealed so as to prevent unauthorized ~~viewing~~examination or disclosure. Counsel for the ~~government,~~Government, the court reporter, or trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the preliminary hearing officer or military judge, and inserted at the appropriate place in the ~~original~~ record of trial. Copies of the report of preliminary hearing or record of trial shall contain appropriate annotations that ~~matter~~ materials were sealed by order of the preliminary hearing officer or military judge and have been inserted in the report of preliminary hearing or original record of trial. This ~~Rule~~rule shall be implemented in a manner consistent with Executive Order 13526, concerning classified national security information.

(b) *Examination and disclosure of sealed materials ~~sealed exhibits and proceedings~~*. Except as provided in ~~the following subsections to~~ this rule, sealed ~~exhibits~~ materials may not be examined or disclosed.

(1) *Prior to referral*. Prior to referral of charges, ~~The~~the following individuals may examine and disclose sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, ~~the MCM~~this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; and the general court-martial convening authority.

(2) *Referral through ~~Prior to~~ authentication*. Prior to authentication of the record by the military judge, sealed materials may not be examined or disclosed in the absence of an order from the military judge based on good cause shown.

(3) *Authentication through action*. After authentication and prior to disposition of the record of trial pursuant to Rule for Courts-Martial 1111, sealed materials may not be examined in the absence of an order from the military judge upon a showing of good cause at a post-trial Article 39a session directed by the ~~Convening Authority~~ convening authority.

(4) After action~~*Reviewing and appellate authorities*~~.

(A) *Examination by reviewing and appellate authorities.* Reviewing and appellate authorities may examine sealed matters when those authorities determine that examination ~~such action~~ is reasonably necessary to a proper fulfillment of their responsibilities under the UCMJ ~~Uniform Code of Military Justice~~, ~~the Manual for Courts-Martial~~this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility.

(B) *Examination by appellate counsel*. Appellate counsel may examine sealed materials subject to the following procedures.

(i) *Sealed materials released to trial counsel or defense counsel*. Materials presented or reviewed at trial and sealed, as well as materials reviewed in camera. released to trial counsel or defense counsel, and sealed, may be examined by appellate counsel upon a colorable showing to the reviewing or appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the

UCMJ, this Manual, governing directives, instructions, regulations, applicable rules of practice and procedure, or rules of professional responsibility.

(ii) *Sealed materials reviewed in camera but not released to trial counsel or defense counsel*. Materials reviewed in camera by a military judge, not released to trial counsel or defense counsel, and sealed may be examined by reviewing or appellate authorities. After examination of said materials, the reviewing or appellate authority may permit examination by appellate counsel for good cause.

(~~B~~C) *Disclosure*. ~~Reviewing and appellate authorities~~ Appellate counsel shall not~~, however,~~ disclose sealed ~~matter or information~~materials in the absence of:

(i) Prior authorization of the Judge Advocate General in the case of review under ~~Rule for Courts-Martial~~ R.C.M. 1201~~(b)~~; or

(ii) Prior authorization of the appellate court before which a case is pending review under ~~Rule for Courts-Martial~~ R.C.M. 1203 and 1204.

~~(C) In those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.~~

~~(D) The authorizing officials in paragraph (B)(ii) above may place conditions on authorized disclosures in order to minimize the disclosure.~~

(D~~E~~) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to ~~Rule for Courts-Martial~~ R.C.M. 112;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to ~~Rule for Courts-Martial~~ R.C.M. 1201~~(b)~~and 1210;

~~(iii) Appellate government counsel;~~

~~(iv) Appellate defense counsel;~~

(iii~~v~~) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(iv~~vi~~) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(v~~vii~~) The Justices of the United States Supreme Court and their professional staffs; and

(vi~~viii~~) Any other court of competent jurisdiction.

(E) Notwithstanding any other provision of this rule, in those cases in which United States Supreme Court review is sought or that are pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.

(5) *Examination of sealed materials~~matters~~*. For the purpose of this rule, "examination" includes reading, inspecting, and viewing~~, photocopying, photographing, disclosing, or manipulating the sealed matters in any way~~.

(6) *Disclosure of sealed materials*. For purposes of this rule, "disclosure" includes photocopying, photographing, disseminating, releasing, manipulating, or communicating the contents of sealed materials in any way.

Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1103A ("Sealed exhibits and proceedings") of the M.C.M. (2016 edition) as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), and its accompanying Discussion are deleted and its provisions are incorporated into R.C.M. 1113.

Rule 1104. Post-trial motions and proceedings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(j), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:
>
> * * *
>
> j. R.C.M. 1104(b)(2) is amended to read as follows:
>
> "(2) Summary courts-martial. The summary court-martial record of trial shall be disposed of as provided in R.C.M. 1305(d). Subsection (b)(1)(D) of this rule shall apply if classified information is included in the record of trial of a summary court-martial."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, §§ 3(m), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

> Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *

m. R.C.M. 1104(a)(2)(A) is amended to read as follows:

"(A) Authentication by the military judge. In special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged and in general courts-martial, except as provided in subsection (a)(2)(B) of this rule, 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, except as provided in subsection (a)(2)(B) of this rule. The record of trial of special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged shall be authenticated in accordance with regulations of the Secretary concerned."

n. R.C.M. 1104(e) is amended to read as follows:

"(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 special court-martial in which a bad-conduct discharge or confinement for one year was adjudged or a general court-martial, the convening authority shall refer the record to the staff judge advocate or legal officer for recommendation under R.C.M. 1106 before the convening authority takes action.".

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex § 1(g), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) R.C.M. l104(a)(1) is amended to read as follows:

" (1) In general. A record is authenticated by the signature of a person specified in this rule who thereby declares that the record accurately reports the proceedings. An electronic record of trial may be authenticated with the electronic signature of the military judge or other authorized person. Service of an authenticated electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service under R.C.M. 1105(c) and 1305(d). No person may be required to authenticate a record of trial if that person is not satisfied that it accurately reports the proceedings. "

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex § 1(n), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2016 ed.)

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(n) R.C.M. 1104(b)(1) is amended by inserting new subsection (E) after the Discussion section to R.C.M. 1104(b)(1)(D)(iii)(d) as follows:

"(E) Victims of Sexual Assault. Qualifying victims, as defined in R.C.M. 1103(g)(3)(A), shall be served a copy of the record of trial in the same manner as the accused under subsection (b) of this rule. In accordance with regulations of the Secretary concerned:

(i) A copy of the record of trial shall be provided to each qualifying victim as soon as it is authenticated or, if the victim requests, at a time thereafter. The victim's receipt of the record of trial, including any delay in receiving it, shall be documented and attached the original record of trial.

(ii) A copy of the convening authority's action as described in R.C.M. 1103(b)(2)(D)(iv) shall be provided to each qualifying victim as soon as each document is prepared. If the victim makes a request in writing, service of the record of trial may be delayed until the action is available.

(iii) Classified information pursuant to subsection (b)(1)(D) of this rule, sealed matters pursuant to R.C.M. 1103A, or other portions of the record the release of which would unlawfully violate the privacy interests of any party, to include those afforded by 5 U.S.C. § 552a, the Privacy Act of 1974, shall not be provided. Matters attached to the record as described in R.C.M. 1103(b)(3) are not required to be provided."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1104 ("Records of trial: Authentication; service; loss; correction; forwarding") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.
>
> R.C.M. 1104 ("Post-trial motions and proceedings") and its accompanying Discussion are new. R.C.M. 1004 implements the provisions of Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and authorizes the filing of post-trial motions before entry of judgment.
>
> R.C.M. 1104 also incorporates portions of R.C.M. 1102 of the M.C.M. (2016 edition).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(jj), 88 Fed. Reg. 50564 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (jj) A new R.C.M. 1104(e) is inserted immediately after R.C.M. 1104(d) to read as follows:
>
> "(e) *Notice to Victims*. A victim must be notified of any post-trial motion, filing, or hearing that may address:
>
> (1) the findings or sentence of a court-martial with respect to the accused;
>
> (2) the unsealing of privileged or private information of a victim; or
>
> (3) any action resulting in the release of an accused."

Rule 1105. Post-trial hearing for person found not guilty only by reason of lack of mental responsibility

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(q), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: "The amendments made to Rules for Courts-Martial 1105 . . . shall apply only in cases in which the sentence is adjudged on or after March 12, 1987." *Id.* § 5(e). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> q. R.C.M. 1105(c) is amended by –
>
> (1) amending subsection (1) to read as follows"
>
> "(1) General and special courts-martial. After a general or special court-martial, 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 staff judge advocate or legal officer is served on the accused. If the accused shows that additional time is required for the accused to submit such matters, the convening authority may, for good cause, extend the 10-day period for not more than 20 additional day".";
>
> (2) striking out subsection (2);
>
> (3) redesignating subsections (3), (4) and (5) as subsections (2), (3) and (4) respectively; and
>
> (4) amending the last sentence of redesignated subsection (2) to read as follows" "If the accused shows that additional time is required for the accused to submit such comments, the convening authority may, for good cause, extend the period in which comments may be submitted for up to 20 additional day".".

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(k), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date); *see also id.* § 4(a) (providing that "[t]he amendment made to Rule for Courts-Martial 1004(c)(4) shall apply only to offenses committed on or after December 9, 1994").

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

k. R.C.M. 1105(c)(1) is amended to read as follows:

"(1) General and special courts-martial. After a general or special court-martial, 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 staff judge advocate or legal officer, 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 staff judge advocate 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."

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(r), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

r. R.C.M. 1105(b) is amended to read as follows:

"(b) Matters that 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 guilt or to approve the sentence. The convening authority is only required to consider written submissions.

(2) Submissions are not subject to the Military Rules of Evidence 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 that 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."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(ff)-(hh), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ff) R.C.M. 1105 is amended by inserting the following Note before the ru'e's heading:

[Note: R.C.M. 1105(b)(l) and (b)(2)(C) apply to offenses committed on or after 24 June 2014"]"

(gg) R.C.M. 1105(b)(1) is amended to read as follows"

"(1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authori'y's decision whether to disapprove any findings of guilty or to approve the sentence, except as maybe limited by R.C.M. 1107(b)(3)(C). The convening authority is· only required to consider written submission"."

(hh) R.C.M. 1105(b)(2)(C) is amended to read as follows"

"(C) Matters in mitigation that were not available for consideration at the court-martial, except as may be limited by R.C.M. 1107(b)(3)(B); and"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

RCM 1105 ("Matters submitted by the accused") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1105 ("Post-trial hearing for person found not guilty only by reason of lack of mental responsibility") is new and incorporates R.C.M. 1102A of the M.C.M. (2016 edition) regarding a post-trial hearing for a person found not guilty only by reason of lack of mental responsibility without substantive amendments.

Rule 1105A Matters submitted by a crime victim [deleted]

The President promulgated the original version of this rule in the amendments made by Executive Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014), described below:

June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex § 1(o), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(o) R.C.M. 1105A is newly inserted and reads as follows"

"Rule 1105A. Matters submitted by a crime victim

(a) In general. A crime victim of an offense tried by any court-martial shall have the right to submit a written statement to the convening authority after the sentence is adjudged.

(b" "Crime vict"m" defined. For purposes of this rule, a crime victim is a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty, and on which the convening authority is taking action under R.C.M. 1107. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following (in order of precedence): a spouse, legal guardian, parent, child, sibling, or similarly situated family member. For a victim that is an institutional entity, the term includes an authorized representative of the entity.

(c) Format of statement. The statement shall be in writing, and signed by the crime victim. Statements may include photographs, but shall not include video, audio, or other media.

(d) Timing of statement.

(1) General and special courts-martial. The crime victim shall submit the statement to the convening authori'y's staff judge advocate or legal officer no later than 10 days after the later of:

(A) if the victim is entitled to a copy of the record of proceedings in accordance with Article 54(e), UCMJ, the date on which the victim receives an authenticated copy of the record of trial or waives the right to receive such a copy; or

(B) the date on which the recommendation of the staff judge advocate or legal officer is served on the victim.

(2) Summary courts-martial. The crime victim shall submit the statement to the summary court-martial officer no later than 7 days after the sentence is announced.

(3) Extensions. If a victim shows that additional time is required for submission of matters, the convening authority or other person taking action, for good cause, may extend the submission period for not more than an additional 20 days.

(e) Notice. Subject to such regulations as the Secretary concerned may prescribe, trial counsel or the summary court-martial officer shall make reasonable efforts to inform crime victims of their rights under this rule, and shall advise such crime victims on the manner in which their statements may be submitted.

(f) Waiver.

(1) Failure to submit a statement. Failure to submit a statement within the time prescribed by this rule shall be deemed a waiver of the right to submit such a statement.

(2) Submission of a statement. Submission of a statement under this rule shall be deemed a waiver of the right to submit an additional statement.

(3) Written waiver. A crime victim may expressly waive, in writing, the right to submit a statement under this rule. Once filed, such waiver may not be revoke"."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(ff)-(hh), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ff) R.C.M. 1105 is amended by inserting the following Note before the ru'e's heading:

"[Note: R.C.M. 1105(b)(1) and (b)(2)(C) apply to offenses committed on or after 24 June 20 14"]"

(gg) R.C.M. 1105(b)(1) is amended to read as follows"

"(1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authori'y's decision whether to disapprove any findings of guilty or to approve the sentence, except as maybe limited by R.C.M. 1107(b)(3)(C). The convening authority is· only required to consider written submission"."

(hh) R.C.M. 1105(b)(2)(C) is amended to read as follows:

"(C) Matters in mitigation that were not available for consideration at the court-martial, except as may be limited by R.C.M. 1107(b)(3)(B); and"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1105A ("Matters submitted by a crime victim") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted and its provisions are substantially incorporated into R.C.M. 1106A.

Rule 1106. Matters submitted by accused

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 1(m), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

m. R.C.M. 1106(b) is amended by striking ou“ "or any reviewi”g" and inserting in lieu thereo“ "to any reviewi”g".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(2), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: “The amendments made to Rules for Courts-Martial . . . 1106 shall apply only in cases in which the sentence is adjudged on or after March 12, 1987.” *Id.* § 5(e). *See also id.* §§ 5(e), 5(g) (providing standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

r. R.C.M. 1106(f)(5) is amended by striking ou“ "5 days from recei”t" and inserting in lieu thereo“ "10 days from service of the record of trial under R.C.M. 1104(b) or receipt of the recommendation, whichever is late”,".

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, §§ 1(g)-(h), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: The amendment shall apply only in cases in which the sentence is adjudged on or after April 1, 1990. *See id.* § 5(c).

3. *First publication of the amended rule*: M.C.M. 1984 (1994 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

g. R.C.M. 1106(e) is amended to read as follows:“

"(e) No findings of guilty; findings of not guilty only by reason of lack of mental responsibility. If the proceedings resulted in an acquittal or in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or if, after the

trial began, the proceedings were terminated without findings and no further action is contemplated, a recommendation under this rule is not require”."

h. R.C.M. 1106(f) is amended –

(1) by insertin“ "and accus”d" afte“ "defense couns”l" in the title thereto; and

(2) in subparagraph (1) to read as follows:“

"(1) Service of recommendation on defense counsel and accused. Before forwarding the recommendation and the record of trial to the convening authority for action under R.C.M. 1107, the staff judge advocate or legal officer shall cause a copy of the recommendation to be served on counsel for the accused. A separate copy will be served on the accused. If it is is impracticable to serve the recommendation on the accused for reasons including but no limited to the transfer of the accused to a distant place, the unauthorized absence of the accused or military exigency, or if the accused so requests on the record at the court-martial or in writing, the accus’d’s copy shall be forwarded to the accus’d’s defense counsel. A statement shall be attached to the record explaining why the accused was not served personall”."

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(l), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

l. R.C.M. 1106(f)(7) is amended to read as follows:

“(7) *New matter in addendum to recommendation.* The staff judge advocate or legal officer may supplement the recommendation after the accused and counsel for the accused have been served with the recommendation and given an opportunity to comment. When new matter is introduced after the accused and counsel for the accused have examined the recommendation, however, the accused and counsel for the accused must be served with the new matter and given ten days from service of the addendum in which to submit comments. Substitute service of the accused’s copy of the addendum upon counsel for the accused is permitted in accordance with the procedures outlined in subparagraph (f)(1) of this rule.”

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(k)-(l), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

k. R.C.M. 1106(d)(3) is amended by adding a new subsection (B) as follows:

"(B) A recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence;"

l. R.C.M. 1106(d)(3)(B)—(E) are redesignated as subsections (C)—(F), respectively.

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(o), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

o. R.C.M. 1106(a) is amended to read as follows:

"(a) In general. Before the convening authority takes action under R.C.M. 1107 on a record of trial by general court-martial or a record of trial by special court-martial that includes a sentence to a bad-conduct discharge or confinement for one year, that convening authority's staff judge advocate or legal officer shall, except as provided in subsection (c) of this rule, forward to the convening authority a recommendation under this rule.".

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex § 1(h), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1106 as amended on July 24, 2008 before its subsequent amendment. The version of R.C.M. 1106 in M.C.M. (2012 ed.) contains both the amendment of July 24, 2008 and the amendment of August 31, 2010.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(h) R.C.M. 1106(d) is amended to read as follows“

"(d) Form and content of recommendation.

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) Form. The recommendation of the staff judge advocate or legal officer shall be a concise, written communication.

(3) Required contents. The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any, any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence, and the staff judge advoca’e’s concise recommendatio”."

Amendment of August 31, 2010

1. Source of the amendment: 2010 Amendments to the Manual for Courts-Martial, United States, Annex § 1(c), Exec. Order No. 54,263, 75 Fed. Reg. 54,263 (Aug. 31, 2010).

2. Effective date of the amendment: September 30, 2010. *See id.* § 2 (providing that the amendments take 30 days after the date if the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(c) R.C.M. 1106(d) is amended to read as follows:

"(d) Form and content of recommendation.

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) Form. The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) Required contents. Except as provided in subsection (e), the staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of the trial, setting forth the findings, sentence, and confinement credit to be applied; a copy or summary of the pretrial agreement, if any; any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence; and the staff judge advoca'e's concise recommendation.

(4) Legal errors. The staff judge advocate or legal officer is not required to examine the record for legal errors. However, when the recommendation is prepared by a staff judge advocate, the staff judge advocate shall state whether, in the staff judge advoca'e'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 staff judge advocate. The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the staff judge advoca'e's statement, if any, concerning legal error is not required.

(5) Optional matters. The recommendation of the staff judge advocate or legal officer may include, in addition to matters included under subsection (d)(3) and (4) of this rule, any additional matters deemed appropriate by the staff judge advocate or legal officer. Such matter may include matters outside the record.

(6) Effect of error. In case of error in the recommendation not otherwise waived under subsection (f)(6) of this rule, appropriate corrective action shall be taken by appellate authorities without returning the case for further action by a convening authorit"."

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex §§ 1(p)-(s), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1106 as it was amended on June 13, 2014 and before its subsequent amendment. The version of R.C.M. 1106 in M.C.M. (2016 ed.) reflects the amendments of June 13, 2014 and June 17, 2015.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(p) R.C.M. 1106(a) is amended to read as follows:

"(a) In general. Before the convening authority takes action under R.C.M. 1107 on a record of trial by general court-martial, on a record of trial by special court-martial that includes a sentence to a bad-conduct discharge or confinement for one year, or on a record of trial by special court-martial in which a victim is entitled to submit a statement pursuant to R.C.M. 1105A, that convening authori'y's staff judge advocate or legal officer shall, except as provided in subsection (c) of this rule, forward to the convening authority a recommendation under this rule."

(q) R.C.M. 1106(d)(3) is amended to read as follows:

"(3) Required contents. Except as provided in subsection (e), the staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of the trial, setting forth the findings, sentence, and confinement credit to be applied; a copy or summary of the pretrial agreement, if any; a copy of any statement submitted by a crime victim pursuant to R.C.M. 1105A; any recommendation for clemency by the sentencing authority made in conjunction with the announced sentence; and the staff judge advoca'e's concise recommendatio"."

(r) R.C.M. 1106(f) and (f)(1) are amended to read as follows:

"(f) Service of recommendation on defense counsel, accused, and victim; defense response.

(1) Service of recommendation on defense counsel, accused, and victim. Before forwarding the recommendation and the record of trial to the convening authority for action under R.C.M. 1107. The staff judge advocate or legal officer shall cause a copy of the recommendation to be served on the counsel for the accused. A separate copy will be served on the accused. If it is impracticable to serve the recommendation on the accused for reasons including the transfer of the accused to a different place, the unauthorized absence of the accused, or military exigency, or if the accused so requests on the record at the court-martial or in writing, the accus'd's copy shall be forwarded to the accus'd's defense counsel. A statement shall be attached to the record explaining why the accused was not served personally. If the accused was found guilty of any offense that resulted in direct physical, emotional, or pecuniary harm to a victim or victims, a separate copy of the recommendation will be served on that victim or those victims. When a victim is under 18 years of age, incompetent, incapacitated, deceased, or otherwise unavailable, service shall be made on one of the following (in order of precedence): the vict'm's attorney, spouse, legal guardian, parent, child, sibling, or similarly situated family member. For a victim that is an institutional entity, service shall be made on an authorized representative of the entity.

(s) R.C.M. 1106(f)(4) is amended to read as follows:

"(4) Response. Counsel for the accused may submit, in writing, corrections or rebuttal to any matter in the recommendation and its enclosures believed to be erroneous, inadequate, or misleading, and may comment on any other matte"."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(ccc), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ccc) R.C.M. 706(a), R.C.M. 706(c)(3)(A), R.C.M. 902(b)(2), R.C.M. 912(a)(l)(K), R.C.M. 1106(b), and R.C.M. 1112(c) are amended by changin" "investigating offic"r" t" "preliminary hearing offic"r".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1106 ("Recommendation of the staff judge advocate or legal officer") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1106 ("Matters submitted by the accused") and its accompanying Discussion are new and incorporate portions of R.C.M. 1105 of the M.C.M. (2016 edition) addressing the post-trial submission of matters to the convening authority by the accused.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(kk), 88 Fed. Reg. 50535 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(kk) R.C.M. 1106(a) is amended to read as follows:

"(a) *In general*. After a sentence is announced in a court-martial, the accused may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109, 1110, or 1306."

Rule 1106A. Matters submitted by crime victim

The President promulgated the original version of this rule in the amendments made by Executive Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1106A and its accompanying Discussion are new and incorporate portions of R.C.M. 1105A of the M.C.M. (2016 edition) addressing the post-trial submission of matters by the crime victim to the convening authority.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(ll), 88 Fed. Reg. 50565 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(ll) R.C.M. 1106A(a) is amended to read as follows:

"(a) *In general*. In a case with a crime victim, after a sentence is announced in a court-martial any crime victim of an offense of which the accused was found guilty may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109, 1110, or 1306."

Rule 1107. Suspension of execution of sentence; remission

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, §§ 3(h)-(i), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

h. The third sentence of R.C.M. 1107(e)(1)(C)(ii) is amended by striking out "lesser offense" and inserting in lieu thereof "lesser included offense".

i. The second sentence of R.C.M. 1107(h) is amended by striking out "provides" and inserting in lieu thereof "provide".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(s), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

s. R.C.M. 1107(b)(5) is amended to read as follows:

"(5) Action when accused lacks mental capacity. The convening authority may not approve a sentence while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the convening authority may direct an examination of the accused in accordance with R.C.M. 706 before deciding whether the accused lacks mental capacity, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the post-trial proceedings. The convening authority may approve the sentence unless it is established, by a preponderance of the evidence -- including matters outside the record of trial -- that the accused does not have the requisite mental capacity. Nothing in this subsection shall prohibit the convening authority from disapproving the findings of guilty and sentence.".

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(i), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

i. R.C.M. 1107(b)(4) is amended to read as follows:

"(4) When proceedings resulted in finding of not guilty or not guilty only by reason of lack of mental responsibility, or there was a ruling amounting to a finding of not guilty. The convening authority shall not take action approving or disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty."

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(n), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: July 6, 1991. *See id.* at §§ 4, 4(g), 4(i) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

n. R.C.M. 1107(f)(1) is amended to read as follows:

"(1) In general. 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. The convening authority's authority to sign shall appear below the signature."

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(m)-(p), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

m. R.C.M. 1107(d) is amended by adding a new subparagraph (3) as follows:

"(3) Postponing service of a sentence to confinement.

(A) In a case in which a court-martial sentences an accused referred to in subsection (B), below, to confinement, the convening authority may postpone service of a sentence to confinement by a court-martial, without the consent of the accused, until after the accused has been permanently released to the armed forces by a state or foreign country.

(B) Subsection (A) applies to an accused who, while in custody of a state or foreign country, is temporarily returned by that state or foreign country to the armed forces for trial by court-martial; and after the court-martial, is returned to that state or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(C) As used in subsection (d)(3), the term "state" means a state of the United States, the District of Columbia, a territory, and a possession of the United States."

n. R.C.M. 1107(d)(3) is redesignated as R.C.M. 1107(d)(4).

o. R.C.M. 1107(e)(1)(C)(iii) is amended to read as follows:

"(iii) Rehearing on sentence only. A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing."

p. R.C.M. 1107(f)(2) is amended to read as follows:

"(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 also may 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. In addition, in any special court-martial, the convening authority may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any time before completion of review under R.C.M. 1112, as long as the correction does not result in action less favorable to the accused than the earlier action. When so directed by a higher reviewing authority or the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate action noted in review of the record of trial under Article 64, 66, 67, or examination of the record of trial under Article 69. The convening authority shall personally sign any supplementary or corrective action."

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, §§ 1(s)-(u), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

s. R.C.M. 1107(b)(4) is amended to read as follows:

"(4) When proceedings resulted in a finding of not guilty or not guilty only by reason of lack of mental responsibility, or there was a ruling amounting to a finding of not guilty. The convening authority shall not take action disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty. When an accused is found not guilty only by reason of lack of mental responsibility, the convening authority, however, shall commit the accused to a suitable facility pending a hearing and disposition in accordance with R.C.M. 1102A."

t. The subheading for R.C.M. 1107(d)(3) is amended to read as follows:

"(3) Deferring service of a sentence to confinement."

u. R.C.M. 1107(d)(3)(A) is amended to read as follows:

"(A) In a case in which a court-martial sentences an accused referred to in subsection (B), below, to confinement, the convening authority may defer service of a sentence to confinement by a court-martial, without the consent of the accused, until after the accused has been permanently released to the armed forces by a state or foreign country."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(p), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

p. R.C.M. 1107(d)(4) is amended to read as follows:

"(4) Limitations on sentence based on record of trial. If the record of trial does not meet the requirements of R.C.M. 1103(b)(2)(B) or (c)(1), the convening authority may not approve a sentence in excess of that which may be adjudged by a special court-martial, or one that includes a bad-conduct discharge, confinement for more than six months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than six months.".

q. R.C.M. 1107(d) is amended by adding at the end the following new paragraph:

"(5) Limitations on sentence of a special court-martial where a fine has been adjudged. A convening authority may not approve in its entirety a sentence adjudged at a special court-martial when, if approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial.".

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(h), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(h) The following subsection (iv) is inserted after R.C.M. 1107(e)(1)(B)(iii) to read as follows:

"(iv) Sentence reassessment. If a superior authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty."

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex §§ 1(t)-(u), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1107 as it was amended on June 13, 2014 and before its subsequent amendment. The version of R.C.M. 1107 in M.C.M. (2016 ed.) reflects the amendments of June 13, 2014, June 17, 2015, and May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(t) R.C.M. 1107(b)(3)(A) is amended by inserting new subsection (iv) immediately after R.C.M. 1107(b)(3)(A)(iii) as follows:

(iv) Any statement submitted by a crime victim pursuant to R.C.M. 1105A."

(u) R.C.M. 1107(b)(3) is amended by inserting new subsection (C) immediately after R.C.M. 1107(b)(3)(B)(iii) as follows:

"(C) Prohibited matters. The convening authority shall not consider any matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(ii)-(uu), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1107 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 1107 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ii) R.C.M. 1107 is amended by inserting the following Note before the rule's heading:

"[Note: Subsections (b)-(f) of R.C.M. 1107 apply to offenses committed on or after 24 June 2014; however, if at least one offense in a case occurred prior to 24 June 2014, then the prior version of R.C.M. 1107 applies to all offenses in the case, except that mandatory minimum sentences under Article 56(b) and applicable unless under RCM 1107(d)(1)(D)-(E) still apply.]"

(jj) R.C.M. 1107(b)(1) is amended to read as follows:

"(1) Discretion of convening authority. Any action to be taken on the findings and sentence is within the sole discretion of the convening authority. The convening authority is not required to review the case for legal errors or factual sufficiency."

(kk) R.C.M. 1107(b)(3)(A)(iii) is amended to read as follows:

"(iii) Any matters submitted by the accused under R.C.M. 1105 or, if applicable, R.C.M. 1106(f);"

(ll) R.C.M. 1107(b)(3)(A)(iv) is amended to read as follows:

"(iv) Any statement submitted by a crime victim pursuant to R.C.M. 11 05A and subsection (C) of this rule."

(mm) R.C.M. 1107(b)(3)(B)(i) is amended to read as follows:

"(i) The record of trial, subject to the provisions of R.C.M. 1103A and subsection (C) of this rule;"

(nn) R.C.M. 1107(c) is amended to read as follows:

"(c) Action on findings. Action on the findings is not required. However, the convening authority may take action subject to .the following limitations:

(1) For offenses charged under subsection (a) or (b) of Article 120, offenses charged under Article 120b, and offenses charged under Article 125:

(A) The convening authority is prohibited from:

(i) Setting aside any finding of guilt or dismissing a specification; or (ii) Changing 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.

(B) The convening authority may direct a rehearing in accordance with subsection (e) of this rule.

(2) For offenses other than those listed in subsection (c)(1) of this rule for which the maximum sentence of confinement that may be adjudged does not exceed two years without regard to the jurisdictional limits of the court, and the sentence adjudged does not include dismissal, a dishonorable discharge, bad-conduct discharge, or confinement for more than six months:

(A) The convening authority may 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 (B) Set aside any finding of guilty and:

(i) Dismiss the specification and, if appropriate, the charge; or (ii) Direct a rehearing in accordance with subsection (e) of this rule.

(3) If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon."

(oo) R.C.M. 1107(d)(1) is amended to read as follows:

"(1) In general.

(A) The convening authority may not disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence of confinement for more than six months.

(B) The convening authority may not disapprove, commute, or suspend that portion of an adjudged sentence that includes a dismissal, dishonorable discharge, or bad-conduct discharge.

(C) The convening authority may disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence when doing so is not explicitly prohibited by this Rule. Actions affecting reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement are not explicitly prohibited by this Rule.

(D) The convening authority shall not disapprove, commute, or suspend any mandatory minimum sentence of dismissal or dishonorable discharge except in accordance with subsection (E) of this Rule.

(E) Exceptions.

(i) Trial counsel recommendation. Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this section shall have the authority to disapprove, commute, or suspend the adjudged sentence, in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

(ii) Pretrial agreement. If a pretrial agreement has been entered into by the convening authority and the accused as authorized by R.C.M. 705, the convening authority shall have the authority to approve, disapprove, commute, or suspend a sentence, in whole or in part, pursuant to the tenns of the pretrial agreement. The convening authority may commute a mandatory sentence of a dishonorable discharge to a bad-conduct discharge pursuant to the terms of the pretrial agreement.

(F) If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon."

(pp) R.C.M. 1107(d)(2) is amended to read as follows:

"(2) Determining what sentence should be approved. The convening authority shall, subject to the limitations in subsection (d)(1) above, approve that sentence that is warranted by the circumstances of the offense and appropriate for the accused."

(qq) R.C.M. 1107(e)(1)(B)(ii) is amended to read as follows:

"(ii) In cases subject to review by the Court of Criminal Appeals, before the case is forwarded under R.C.M. 1111(a)(1) or (b)(1), but only as to any sentence that was approved or findings of guilty as were not disapproved in any earlier action. In cases of rehearing under subparagraph (c)(2) of this Rule, a supplemental action disapproving the sentence and some or all of the findings , as appropriate, shall be taken; or"

(rr) R.C.M. 1107(e)(1)(C)(ii) is deleted.

(ss) R.C.M. 1107(e)(1)(C)(iii) is renumbered as R.C.M. 1107(e)(1)(C)(ii).

(tt) R.C.M. 1107(±)(2) is amended to read as follows:

"(2) Modification of initial action. Subject to the limitations in subsections (c) and (d) of this Rule, 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. In addition, in any special court-martial, the convening authority may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any time before completion of review under R.C.M. 1112, as long as the correction does not result in action less favorable to the accused than the earlier action. When so directed by a higher reviewing authority or the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate action noted in review of the record of trial under Articles 64, 66, 67, or examination of the record of trial under Article 69. The convening authority shall personally sign any supplementary or corrective action. A written explanation is required for any modification of initial action that: 1) sets aside any finding of guilt or dismisses or changes any charge or specification for an offense; or 2) disapproves, commutes, or suspends, in whole or in part, the sentence. The written explanation shall be made a part of the record of trial and action thereon."

(uu) R.C.M. 1107(g) is amended to read as follows:

"(g) Incomplete, ambiguous, or erroneous action. When the action of the convening authority or of a higher authority is incomplete or ambiguous or contains error, the authority who took the incomplete, ambiguous, or erroneous action may be instructed by an authority acting under Articles 64, 66, 67, 67a, or 69 to withdraw the original action and substitute a corrected action."

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(cc)-(gg), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(cc) The Note currently located immediately following the title of R.C.M. 1107 and prior to R.C.M. 1107(a) is amended to read as follows:

"[Note: Subsections (b)-(f) of R.C.M. 1107 apply to offenses committed on or after 24 June 20 14; however, if at least one offense resulting in a finding of guilty in a case occurred prior to 24 June 2014, or includes a date range where the earliest date in the range for that offense is before 24 June 2014, then the prior version of R.C.M. 1107 applies to all offenses in the case, except that mandatory minimum sentences under Article 56(b) and applicable rules under R.C.M. 1107(d)(1)(D)-(E) still apply.]"

(dd) R.C.M. 1107(b)(5) is amended to delete the sentence, "Nothing in this subsection shall prohibit the convening authority from disapproving the findings of guilty and sentence."

(ee) R.C.M. 1107(c) is amended to read as follows:

"(c) Action on findings. Action on the findings is not required. However, the convening authority may take action subject to the following limitations:

(1) Where a court-martial includes a finding of guilty for an offense listed in subparagraph (c)(1)(A) of this rule, the convening authority may not take the actions listed in subparagraph (c)(l)(B) of this rule:

(A) Offenses

(i) Article 120(a) or (b), Article 120b, or Article 125;

(ii) Offenses for which the maximum sentence of confinement that may be adjudged exceeds two years without regard to the jurisdictional limits of the court; or

(iii) Offenses where the adjudged sentence for the case includes dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than six months.

(B) Prohibited actions

(i) Dismiss a charge or specification by setting aside a finding of guilty thereto; or

(ii) 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.

(2) The convening authority may direct a rehearing in accordance with subsection (e) of this rule.

(3) For offenses other than those listed in subparagraph (c)(l)(A) of this rule:

(A) The convening authority may 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

(B) Set aside any finding of guilty and:

(i) Dismiss the specification and, if appropriate, the charge; or

(ii) Direct a rehearing in accordance with subsection (e) of this rule.

(4) If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon."

(ff) R.C.M. 1107(d) is amended to read as follows:

"(d) Action on the sentence.

(1) The convening authority shall take action on the sentence subject to the following:

(A) The convening authority may disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement.

(B) Except as provided in subparagraph (d)(l)(C) of this rule, the convening authority may not disapprove, commute, or suspend, in whole or in part, that portion of an adjudged sentence that includes:

(i) confinement for more than six months; or

(ii) dismissal, dishonorable discharge, or bad-conduct discharge.

(C) Exceptions.

(i) Trial counsel recommendation. Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this rule shall have the authority to disapprove, commute, or suspend the adjudged sentence, in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

(ii) Pretrial agreement. If a pretrial agreement has been entered into by the convening authority and the accused, as authorized by R.C.M. 705, the convening authority or another

person authorized to act under this rule shall have the authority to approve, disapprove, commute, or suspend a sentence, in whole or in part, pursuant to the terms of the pretrial agreement. However, if a mandatory minimum sentence of a dishonorable discharge applies to an offense for which an accused has been convicted, the convening authority or another person authorized to act under this rule may commute the dishonorable discharge to a bad-conduct discharge pursuant to the terms of the pretrial agreement.

(D) If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense listed in subparagraph (c)(1)(A) of this rule, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon."

(gg) R.C.M. 1107(e) is amended to read as follows:

"(e) Ordering rehearing or other trial.

(1) Rehearings not permitted. A rehearing may not be ordered by the convening authority where the adjudged sentence for the case includes a sentence of dismissal, dishonorable discharge, or bad-conduct discharge or confinement for more than six months.

(2) Rehearings permitted.

(A) In general. Subject to paragraph (e)(l) and subparagraphs (e)(2)(B) through (e)(2)(E) of this rule, 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 the sentence only.

(B) When the convening authority may order a rehearing. The convening authority may order a rehearing:

(i) When taking action on the court-martial under this rule. Prior to ordering a rehearing on a finding, the convening authority must disapprove the applicable finding and the sentence and state the reasons for disapproval of said finding. Prior to ordering a rehearing on the sentence, the convening authority must disapprove the sentence.

(ii) When authorized to do so by superior competent authority. If the convening authority finds a rehearing as to any offenses impracticable, the convening authority may dismiss those specifications and, when appropriate, charges.

(iii) Sentence reassessment. If a superior competent authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty."

(C) Limitations.

(i) Sentence approved. A rehearing shall not be ordered if, in the same action, a sentence is approved.

(ii) Lack of sufficient evidence. A rehearing may not be ordered as to findings of guilty when there is a lack of sufficient evidence in the record to support the findings of guilty of the offense charged or of any lesser included offense. A rehearing may be ordered, however, if the proof of guilt consisted of inadmissible evidence for which there is available an admissible substitute. A rehearing may be ordered as to any lesser offense included in an offense of which the accused was found guilty, provided there is sufficient evidence in the record to support the lesser included offense.

(iii) Rehearing on sentence only. A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing.

(D) Additional charges. Additional charges may be referred for trial together with charges as to which a rehearing has been directed.

(E) Lesser included offenses. If at a previous trial the accused was convicted of a lesser included offense, a rehearing may be ordered only as to that included offense or as to a lesser included offense of the included offense that resulted in a finding of guilty at the previous trial. If, however, a rehearing is ordered improperly on the original offense charged and the accused is convicted of that offense at the rehearing, the finding as to the lesser included offense of which the accused was convicted at the original trial may nevertheless be approved.

(3) "Other" trial. The convening or higher authority may order an "other" trial if the original proceedings were invalid because of lack of jurisdiction or failure of a specification to state an offense. The authority ordering an "other" trial shall state in the action the basis for declaring the proceedings invalid."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1107 (“Action by convening authority”) of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1107 (“Suspension of execution of sentence; remission”) is new and implements Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017,

Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding suspension of a sentence and the remission of a sentence in limited circumstances.

The rule incorporates portions of R.C.M. 1108 of the M.C.M. (2016 edition).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(mm), 88 Fed. Reg. 50565 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(mm) R.C.M. 1107(b)(2) is amended to read as follows:

"(2) *Suspension after entry of judgment*. The convening authority who convened the original court-martial, the convening authority's successor in command, or a convening authority otherwise designated by the Secretary concerned may suspend any part of the unexecuted part of any sentence except a sentence of death, dishonorable discharge, bad-conduct discharge, dismissal, or confinement for more than six months."

Rule 1108. Vacation of suspension of sentence

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(j), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

j. The fourth sentence of R.C.M. 1108(b) is amended by inserting "of" after "regardless".

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(j), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> j. R.C.M. 1108(b) is amended –
>
> (1) by striking out "officer exercising general court-martial jurisdiction over the command to which the accused is assigned" and inserting in lieu thereof "commanding officer"; and
>
> (2) by inserting the following new sentence at the end thereof:
>
> "The 'unexecuted part of any sentence' includes that part which has been approved and ordered executed but which has not actually been carried out."

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(q), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:
>
> * * *
>
> q. R.C.M. 1108(b) is amended to read as follows:
>
> "(b) Who may suspend and remit. The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f), suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General,

or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President. The commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial which does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The "unexecuted part of any sentence" includes that part which has been approved and ordered executed but which has not actually been carried out."

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(i), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(i) R.C.M. 1108(b) is amended to read as follows:

"(b) Who may suspend and remit. The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial, except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f), suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole that has been ordered executed. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years. The commander of the accused who has the authority to convene a court-martial of the kind that adjudged the sentence may suspend or remit any part of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial that does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The "unexecuted part of any sentence" is that part that has been approved and ordered executed but that has not actually been carried out."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(yy)-(ww), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1108 as amended in July 17, 2015 before its subsequent amendment. The version of R.C.M. 1108 in M.C.M. (2016 ed.) contains both the amendment of June 17, 2015 and the amendment of May 20, 2016.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(vv) R.C.M. 1108(b) is amended to insert the following before the rule's text:

"[Note: R.C.M. 1108(b) applies to offenses committed on or after 24 June 2014.]"

(ww) R.C.M. 1108(b) is amended to read as follows:

"(b) Who may suspend and remit. The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial, except for a sentence of death or as prohibited under R.C.M. 1107(d). The general court-martial convening authority over the accused at the time of the court-martial may, when taking action under R.C.M. 1112(f), suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole that has been ordered executed. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole after the service of a period of confinement of not less than 20 years. The commander of the accused who has the authority to convene a court-martial of the kind that adjudged the sentence may suspend or remit any part of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial that does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The "unexecuted part of any sentence" is that part that has been approved and ordered executed but that has not actually been carried out."

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1(hh), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(hh) The Note currently located immediately following the title of R.C.M. 1108(b) and prior to the first line, "The convening authority may . . .", is amended to read as follows:

"[Note: R.C.M. 1108(b) applies to offenses committed on or after 24 June 2014; however, if at least one offense in a case occurred prior to 24 June 2014, then the prior version of R.C.M. 1108(b) applies to all offenses in the case.]"

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1108 ("Vacation of suspension of sentence") and its accompanying Discussion are new. R.C.M. 1108 implements Articles 60-60c and 72 as amended by Sections 5321, 5322, 5323, 5324, and 5335 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding procedures for the vacation of a suspension of a sentence.

R.C.M. 1108 incorporates portions of R.C.M. 1109 of the M.C.M. (2016 edition).

Rule 1109. Reduction of sentence, general and special courts-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(t), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

t. R.C.M. 1109 is amended --

(1) in subsection (c)(3) by striking out "probation" and inserting in lieu thereof "suspension";

(2) in subsection (c)(4)(A) by inserting "in writing" after "notified";

(3) in subsection (d)(1)(A) by striking out "probation" and inserting in lieu thereof "suspension";

(4) in subsection (d)(1)(B) by inserting "in writing" after "notified";

(5) in subsection (d)(1)(B)(iii) by striking out "probation" and inserting in lieu thereof "suspension";

(6) in subsection (d)(1)(D) by inserting "written" before "recommendation concerning vacation";

(7) in subsection (e)(4) by inserting "written" before "recommendation concerning vacation"; and

(8) in subsection (e)(5) by striking out "probation" and inserting in lieu thereof "suspension".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(q), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

v. R.C.M. 1109 is amended to read as follows:

"Rule 1109. Vacation of suspension of sentence

(a) In general. Suspension of execution of the sentence of a court-martial may be vacated for violation of the conditions of the suspension as provided in this rule.

(b) Timeliness.

(1) Violation of conditions. Vacation shall be based on a violation of the conditions of suspension that occurs within the period of suspension.

(2) Vacation proceedings. Vacation proceedings under this rule shall be completed within a reasonable time.

(3) Order vacating the suspension. The order vacating the suspension shall be issued before the expiration of the period of suspension.

(4) Interruptions to the period of suspension. Unauthorized absence of the probationer or the commencement of proceedings under this rule to vacate suspension interrupts the running of the period of suspension.

(c) Confinement of probationer pending vacation proceedings.

(1) In general. A probationer under a suspended sentence to confinement may be confined pending action under subsection (d)(2) of this rule, in accordance with the procedures in this subsection.

(2) Who may order confinement. Any person who may order pretrial restraint under R.C.M. 304(b) may order confinement of a probationer under a suspended sentence to confinement.

(3) Basis for confinement. A probationer under a suspended sentence to confinement may be ordered into confinement upon probable cause to believe the probationer violated any conditions of the suspension.

(4) Review of confinement. Unless proceedings under subsection (d)(1), (e), (f), or (g) of this rule are completed within 7 days of imposition of confinement of the probationer (not including any delays requested by probationer), a preliminary hearing shall be conducted by a neutral and detached officer appointed in accordance with regulations of the Secretary concerned.

(A) Rights of accused. Before the preliminary hearing, the accused shall be notified in writing of:

(i) The time, place, and purpose of the hearing, including the alleged violation(s) of the conditions of suspension;

(ii) The right to be present at the hearing;

(iii) The right to be represented at the hearing by civilian counsel provided by the probationer or, upon request, by military counsel detailed for this purpose; and

(iv) The opportunity to be heard, to present witnesses who are reasonably available and other evidence, and the right to confront and cross-examine adverse witnesses unless the hearing officer determines that this would subject these witnesses to risk or harm. For purposes of this subsection, a witness is not reasonably available if the witness requires reimbursement by the United States for cost incurred in appearing, cannot appear without unduly delaying the proceedings or, if a military witness, cannot be excused from other important duties.

(B) Rules of evidence. Except for Mil. R. Evid. Section V (Privileges) and Mil. R. Evid. 302 and 305, the Military Rules of Evidence shall not apply to matters considered at the preliminary hearing under this rule.

(C) Decision. The hearing officer shall determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension. If the hearing officer determines that probable cause is lacking, the hearing officer shall issue a written order directing that the probationer be released from confinement. If the hearing officer determines that there is probable cause to believe that the probationer violated the conditions of suspension, the hearing officer shall set forth that decision in a written memorandum, detailing therein the evidence relied upon and reasons for making the decision. The hearing officer shall forward the original memorandum or release order to the probationer's commander and forward a copy to the probationer and the officer in charge of the confinement facility.

(d) Vacation of suspended general court-martial sentence.

(1) Action by officer having special court-martial jurisdiction over probationer.

(A) In general. Before vacation of the suspension of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall personally hold a hearing on the alleged violation of the conditions of suspension. If there is no officer having special court-martial jurisdiction over the probationer who is subordinate to the officer having general court-martial jurisdiction over the probationer, the officer exercising general court-martial jurisdiction over the probationer shall personally hold a hearing under subsection (d)(1) of this rule. In such cases, subsection (d)(1)(D) of this rule shall not apply.

(B) Notice to probationer. Before the hearing, the officer conducting the hearing shall cause the probationer to be notified in writing of:

(i) The time, place, and purpose of the hearing;

(ii) The right to be present at the hearing;

(iii) The alleged violation(s) of the conditions of suspension and the evidence expected to be relied on;

(iv) The right to be represented at the hearing by civilian counsel provided by the probationer or, upon request, by military counsel detailed for this purpose; and

(v) The opportunity to be heard, to present witnesses and other evidence, and the right to confront and cross-examine adverse witnesses, unless the hearing officer determines that there is good cause for not allowing confrontation and cross-examination.

(C) Hearing. The procedure for the vacation hearing shall follow that prescribed in R.C.M. 405(g), (h)(1), and (i).

(D) Record and recommendation. The officer who conducts the vacation proceeding shall make a summarized record of the proceeding and forward the record and that officer's written recommendation concerning vacation to the officer exercising general court-martial jurisdiction over the probationer.

(E) Release from confinement. If the special court-martial convening authority finds there is not probable cause to believe that the probationer violated the conditions of the

suspension, the special court-martial convening authority shall order the release of the probationer from confinement ordered under subsection (c) of this rule. The special court-martial convening authority shall, in any event, forward the record and recommendation under subsection (d)(1)(D) of this rule.

(2) Action by officer exercising general court-martial jurisdiction over probationer.

(A) In general. The officer exercising general court-martial jurisdiction over the probationer shall review the record produced by and the recommendation of the officer exercising special court-martial jurisdiction over the probationer, decide whether the probationer violated a condition of suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising general court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.

(B) Execution. Any unexecuted part of a suspended sentence ordered vacated under this subsection shall, subject to R.C.M. 1113(c), be ordered executed.

(e) Vacation of a suspended special court-martial sentence wherein a bad-conduct discharge was not adjudged.

(1) In general. Before vacating the suspension of a special court-martial punishment that does not include a bad-conduct discharge, the special court-martial convening authority for the command in which the probationer is serving or assigned shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.

(2) Notice to probationer. The person conducting the hearing shall notify the probationer, in writing, before the hearing of the rights specified in subsection (d)(1)(B) of this rule.

(3) Hearing. The procedure for the vacation hearing shall follow that prescribed in R.C.M. 405(g), (h)(1), and (i).

(4) Authority to vacate suspension. The special court-martial convening authority for the command in which the probationer is serving or assigned shall have the authority to vacate any punishment that the officer has the authority to order executed.

(5) Record and recommendation. If the hearing is not held by the commander with authority to vacate the suspension, the person who conducts the hearing shall make a summarized record of the hearing and forward the record and that officer's written recommendation concerning vacation to the commander with authority to vacate the suspension.

(6) Decision. The special court-martial convening authority shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether the probationer violated a condition of suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.

(7) Execution. Any unexecuted part of a suspended sentence ordered vacated under this subsection shall be ordered executed.

(f) Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge.

(1) The procedure for the vacation of a suspended approved bad-conduct discharge shall follow that set forth in subsection (d) of this rule.

(2) The procedure for the vacation of the suspension of any lesser special court-martial punishment shall follow that set forth in subsection (e) of this rule.

(g) Vacation of a suspended summary court-martial sentence.

(1) Before vacation of the suspension of a summary court-martial sentence, the summary court-martial convening authority for the command in which the probationer is serving or assigned shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.

(2) Notice to probationer. The person conducting the hearing shall notify the probationer before the hearing of the rights specified in subsections (d)(1)(B)(i), (ii), (iii), and (v) of this rule.

(3) Hearing. The procedure for the vacation hearing shall follow that prescribed in R.C.M. 405(g), (h)(1), and (i).

(4) Authority to vacate suspension. The summary court-martial convening authority for the command in which the probationer is serving or assigned shall have the authority to vacate any punishment that the officer had the authority to order executed.

(5) Record and recommendation. If the hearing is not held by the commander with authority to vacate the suspension, the person who conducts the vacation proceeding shall make a summarized record of the proceeding and forward the record and that officer's written recommendation concerning vacation to the commander with authority to vacate the suspension.

(6) Decision. A commander with authority to vacate the suspension shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether the probationer violated a condition of suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.

(7) Execution. Any unexecuted part of a suspended sentence ordered vacated under this subsection shall be ordered executed."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, §§ 3(r)-(s), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

r. R.C.M. 1109(e) and (e)(1) are amended to read as follows:

"(e) Vacation of a suspended special court-martial sentence wherein a bad-conduct discharge or confinement for one year was not adjudged.

"(1) In general. Before vacating the suspension of a special court-martial punishment that does not include a bad-conduct discharge or confinement for one year, the special court-martial convening authority for the command in which the probationer is serving or assigned shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.".

s. R.C.M. 1109(f) and (f)(1) are amended to read as follows:

"(f) Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge or confinement for one year.

"(1) The procedure for the vacation of a suspended approved bad-conduct discharge or of any suspended portion of an approved sentence to confinement for one year, shall follow that set forth in subsection (d) of this rule.".

Amendment of September 16, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(ii)-(xx), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ii) R.C.M. 1109(a) is amended to read as follows:

"(a) In general. Suspension of execution of the sentence of a court-martial may be vacated for violation of any condition of the suspension as provided in this rule."

(jj) R.C.M. 1109(c)(4)(A) is amended to read as follows:

"(A) Rights of probationer. Before the preliminary hearing, the probationer shall be notified in writing of:"

(kk) R.C.M. 1109(c)(4)(C) is amended to read as follows:

"(C) Decision. The hearing officer shall determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension. If the hearing officer determines that probable cause is lacking, the hearing officer shall issue a

written order directing that the probationer be released from confinement. If the hearing officer determines that there is probable cause to believe that the probationer violated a condition of suspension, the hearing officer shall set forth this determination in a written memorandum that details therein the evidence relied upon and reasons for making the decision. The hearing officer shall forward the original memorandum or release order to the probationer's commander and forward a copy to the probationer and the officer in charge of the confinement facility."

(ll) A new sentence is added to the end of R.C.M. 1109(d)(1)(A) and reads as follows: "The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension."

(mm) R.C.M. 1109(d)(l)(C) is amended to read as follows:

"(C) Hearing. The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule."

(nn) A new sentence is added to the end of R.C.M. 1109(d)(l)(D) and reads as follows: "This record shall include the recommendation, the evidence relied upon, and reasons for making the decision."

(oo) R.C.M. 1109(d)(2)(A) is amended to read as follows:

"(A) In general. The officer exercising general court-martial jurisdiction over the probationer shall review the record produced by and the recommendation of the officer exercising special court-martial jurisdiction over the probationer, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising general court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence."

(pp) A new sentence is added to the end of R.C.M. 1109(e)(l) and reads as follows: "The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension."

(qq) R.C.M. 1109(e)(3) is amended to read as follows:

"(3) Hearing. The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule."

(rr) A new sentence is added to the end of R.C.M. 1109(e)(5) and reads as follows: "This record shall include the recommendation, the evidence relied upon, and reasons for making the decision."

(ss) R.C.M. 1109(e)(6) is amended to read as follows:

"(6) Decision. The special court-martial convening authority shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended

sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence."

(tt) A new sentence is added to the end of R.C.M. 1109(g)(l) and reads as follows:

"The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension."

(uu) R.C.M. 1109(g)(3) is amended to read as follows:

"(3) Hearing. The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule."

(vv) A new sentence is added to the end of R.C.M. 1109(g)(5) and reads as follows: "This record shall include the recommendation, the evidence relied upon, and reasons for making the decision."

(ww) R.C.M. 1109(g)(6) is amended to read as follows:

"(6) Decision. A commander with authority to vacate the suspension shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence."

(xx) A new R.C.M. 1109(h) is inserted immediately after R.C.M. 1109(g)(7) and reads as follows:

"(h) Hearing procedure.

(1) Generally. The hearing shall begin with the hearing officer informing the probationer of the probationer's rights. The government will then present evidence. Upon the conclusion of the government's presentation of evidence, the probationer may present evidence. The probationer shall have full opportunity to present any matters in defense, extenuation, or mitigation. Both the government and probationer shall be afforded an opportunity to cross-examine adverse witnesses. The hearing officer may also question witnesses called by the parties.

(2) Rules of evidence. The Military Rules of Evidence—other than Mil. R. Evid. 301, 302, 303, 305,412, and Section V—shall not apply. Nor shall Mil. R. Evid. 412(b)(l)(C) apply. In applying these rules to a vacation hearing, the term "military judge," as used in these rules, shall mean the hearing officer, who shall assume the military judge's authority to exclude evidence from the hearing, and who shall, in discharging this duty, follow the procedures set forth in these rules. However, the hearing officer is not authorized to order production of communications covered by Mil. R. Evid. 513 or 514.

(3) Production of witnesses and other evidence. The procedure for the production of witnesses and other evidence shall follow that prescribed in R.C.M. 405(g), except that R.C.M. 405(g)(3)(B) shall not apply. The hearing officer shall only consider testimony and other evidence that is relevant to the limited purpose of the hearing.

(4) Presentation of testimony. Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the probationer may make an unsworn statement.

(5) Other evidence. If relevant to the limited purpose of the hearing, and not cumulative, a hearing officer may consider other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that the hearing officer determines is reliable. This other evidence need not be sworn.

(6) Presence of probationer. The taking of evidence shall not be prevented and the probationer shall be considered to have waived the right to be present whenever the probationer:

(A) After being notified of the time and place of the proceeding is voluntarily absent; or

(B) After being warned by the hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify exclusion from the proceeding.

(7) Objections. Any objection alleging failure to comply with these rules shall be made to the convening authority via the hearing officer. The hearing officer shall include a record of all objections in the written recommendations to the convening authority.

(8) Access by spectators. Vacation hearings are public proceedings and should remain open to the public whenever possible. The convening authority who directed the hearing or the hearing officer may restrict or foreclose access by spectators to all or part of the proceedings if an overriding interest exists that outweighs the value of an open hearing. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or hearing officers must conclude that no lesser methods short of closing the hearing can be used to protect the overriding interest in the case. Convening authorities or hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or hearing officer believes closing the hearing is necessary, the convening authority or hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the record.

(9) Victim’s rights. Any victim of the underlying offense for which the probationer received the suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, has the right to reasonable, accurate, and timely notice of the vacation hearing. For purposes of this rule, the term "victim" is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, 2018 Amendments to the Manual for Courts-Martial, United States,

Executive Order 13,825, Annex 1, § 1(n) [Note: Annex 1, § 1 contains two paragraphs designated as 1(n)] & Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendments: The amendments to R.C.M. 1109, which were made in Annex 1, § 1(n), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments in Annex 1 take effect on March 1, 2018, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date). The amendments to R.C.M. 1109, which were made in Annex 2, § 2, took effect on January 1, 2019. *Id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 1, § 1(n), made the following amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States is amended as follows:
>
> * * *
>
> (n) R.C.M. 1109(d)(2)(A) is amended to read as follows:
>
> "(A) *In general*. The officer exercising general court-martial jurisdiction over the probationer shall review the record produced by and the recommendation of the officer exercising special court-martial jurisdiction over the probationer, decide whether ~~there is probable cause to believe that~~ the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising general court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence."

Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1109 ("Vacation of suspension of sentence") of the M.C.M. (2016 edition), as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), and its accompanying Discussion, are deleted.
>
> R.C.M. 1109 ("Reduction of Sentence, general and special courts-martial") and its accompanying Discussion are new. R.C.M. 1109 implements Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the reduction of a sentence in specified general or special court-martials.
>
> R.C.M. 1109 incorporates portions of R.C.M. 1107 of the M.C.M. (2016 edition).

<u>Amendment of July 28, 2023</u>

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(nn)-(qq), 88 Fed. Reg. 50565 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(nn) R.C.M. 1109(e)(3) is amended to read as follows:

"(3) *Who may act*.

(A) Before entry of judgment, the convening authority who convened the original court-martial or the convening authority's successor in command may act on the recommendation of trial counsel under paragraph (2).

(B) After entry of judgment, the convening authority who convened the original court-martial or the convening authority's successor in command or a convening authority otherwise designated by the Secretary concerned may act on the recommendation of trial counsel under paragraph (2)."

(oo) R.C.M. 1109(e)(5)(B) is amended to read as follows:

"(B) In the case of a recommendation by trial counsel under paragraph (2) of this subsection made more than one year after entry of judgment, the convening authority who convened the original court-martial or the convening authority's successor in command or a convening authority otherwise designated by the Secretary concerned may reduce a sentence only if the substantial assistance of the accused involved-

(i) Information not known to the accused until one year or more after sentencing;

(ii) Information the usefulness of which could not reasonably have been anticipated by the accused until more than one year after sentencing and which was promptly provided to the Government after its usefulness was reasonably apparent to the accused; or

(iii) Information provided by the accused to the Government within one year of sentencing, but which did not become useful to the Government until more than one year after sentencing."

(pp) R.C.M. 1109(e)(7) is amended to read as follows:

"(7) *Action after entry of judgment*. If the convening authority who convened the original court-martial or the convening authority's successor in command or a convening authority otherwise designated by the Secretary concerned acts on the sentence of an accused after entry of judgment, the action shall be forwarded to the chief trial judge. The chief trial judge, or a military judge detailed by the chief trial judge, shall modify the judgment of the court-martial to reflect the action. The action and the modified judgment shall be forwarded to the Judge Advocate General and shall be included in the original record of trial. The reduction of a sentence under this rule shall not abridge any right of the accused to appellate review."

(qq) R.C.M. 1109(g)(2) is amended to read as follows:

"(2) *Action on sentence*. If the convening authority decides to act on the sentence under this rule, such action shall be in writing and shall include a written statement explaining the action. If any

part of the sentence is disapproved, reduced, commuted, or suspended, the action shall clearly state which parts or parts are disapproved, reduced, commuted, or suspended. The convening authority's staff judge advocate or legal advisor shall forward the action with the written explanation to the military judge to be attached to the record of trial."

Rule 1110. Action by convening authority in certain general and special courts-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(k), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

> Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> k. R.C.M. 1110(b)(2)(B) is amended by striking out the comma between "accused" and "upon".

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(o), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: July 6, 1991. *See id.* at §§ 4, 4(g), 4(i) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> o. R.C.M. 1110(f)(1) is amended to read as follows:

"(1) Waiver. The accused may sign a waiver of appellate review at any time after the sentence is announced. The waiver must be filed within 10 days after the accused or defense counsel is served with a copy of the action under R.C.M. 1107(h). Upon written application of the accused, the convening authority may extend this period for good cause, for not more than 30 days."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, §§ 3(t), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

t. R.C.M. 1110(a) is amended to read as follows:

"(a) In general. After any general court-martial, except one in which the approved sentence includes death, and after any special court-martial in which the approved sentence includes a bad-conduct discharge or confinement for one year, the accused may waive or withdraw appellate review.".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1110 ("Waiver or withdrawal of appellate review") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1110 ("Action by convening authority in certain general and special courts-martial") and its accompanying Discussion are new. R.C.M. 1110 implements Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of

2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the action that the convening authority may take in certain general and special courts-martial.

R.C.M. 1110 incorporates portions of R.C.M. 1107 of the M.C.M. (2016 edition).

Rule 1111. Entry of judgment

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, §§ 3(u), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

u. R.C.M. 1111(b) is amended to read as follows:

"(1) Cases including an approved bad-conduct discharge or confinement for one year. If the approved sentence of a special court-martial includes a bad-conduct discharge or confinement for one year, the record shall be disposed of as provided in subsection (a) of this rule.

"(2) Other cases. The record of trial by a special court-martial in which the approved sentence does not include a bad-conduct discharge or confinement for one year shall be forwarded directly to a judge advocate for review under R.C.M. 1112. Four copies of the order promulgating the result of trial shall be forwarded with the record of trial, unless otherwise prescribed by regulations of the Secretary concerned.".

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex § 1(i), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(i) R.C.M. 1111(a) (1) is amended by inserting the following sentence at the end of the rule:

"Forwarding of an authenticated electronic copy of the record of trial satisfies the requirements under this rule."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1111 ("Disposition of the record of trial after action") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1111 ("Entry of judgment") and its accompanying Discussion are new. R.C.M. 1111 implements Articles 60c and 63, as added by Sections 5324 and 5327 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 63 was amended by Section 531(i) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

The entry of judgment replaces the action by the convening authority as the means by which the trial proceedings terminate and the appellate process begins. The judgment replaces the promulgating order as the document that reflects the outcome of the court-martial.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(rr), 88 Fed. Reg. 50567 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(rr) R.C.M. 1111(c) is amended to read as follows:

"(c) *Modification of judgment*. The judgment may be modified as follows—

(1) The military judge who entered a judgment may issue a modified judgment to correct any errors prior to certification of the record of trial under R.C.M. 1112.

(2) The Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Judge Advocate General or the Judge Advocate General's designee may modify a judgment in the performance of their duties and responsibilities.

(3) If a case is remanded to a military judge, the military judge may modify the judgment consistent with the purposes of the remand.

(4) Any modification to the judgment of a court-martial must be included in the record of trial."

Rule 1112. Certification of record of trial; general and special courts-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(l), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

l. R.C.M. 1112(f)(2) is amended by inserting a comma between "rehearing" and "but".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(u), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

u. R.C.M. 1112 is amended --

(1) in subsection (d) by adding the following new paragraph at the end thereof:

"Copies of the judge advocate's review under this rule shall be attached to the original and all copies of the record of trial. A copy of the review shall be forwarded to the accused."; and

(1) in subsection (e) by striking out the last sentence.

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(k), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

k. R.C.M. 1112(b) is amended to read as follows:

"(b) Exception. If the accused was found not guilty or not guilty only by reason of lack of mental responsibility of all offenses or if the convening authority disapproved all findings or guilty, no review under this rule is required."

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(v), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

v. R.C.M. 1112(a)(2) is amended to read as follows:

"(2) Each special court-martial in which the accused has waived or withdrawn appellate review under R.C.M. 1110 or in which the approved sentence does not include a bad-conduct discharge or confinement for one year; and".

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 1(ccc), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(ccc) R.C.M. 706(a), R.C.M. 706(c)(3)(A), R.C.M. 902(b)(2), R.C.M. 912(a)(l)(K), R.C.M. 1106(b), and R.C.M. 1112(c) are amended by changing "investigating officer" to "preliminary hearing officer".

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1112 ("Review by a judge advocate") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1112 ("Certification of record of trial; general and special courts-martial") and its accompanying Discussion are new. R.C.M. 1112 implements Articles 54 and 60-60c, as

amended by Sections 5238, 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), providing for the certification and contents of records of trial in general and special courts-martial.

R.C.M. 1112 incorporates portions of R.C.M. 1103 of the M.C.M. (2016 edition).

The Discussion following R.C.M. 1112(e)(3)(B)(iii) reflects that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside of the procedures set forth in R.C.M. 1113(b).

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(ss), 88 Fed. Reg. 50568 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(ss) R.C.M. 1112(b)(5) is amended to read as follows:

"(5) The election, if any, for application of sentencing rules as in effect on or after January 1, 2019 under R. C.M. 902A; and the election, if any, for sentencing by members in lieu of sentencing by military judge under R.C.M. 1002(b);"

Amendment of July 28, 2023 (Annex 3)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(w), 88 Fed. Reg. 50727 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(w) R.C.M. 1112(b) is amended to read as follows:

(b) *Contents of the record of trial.* The record of trial contains the court-martial proceedings and includes any evidence or exhibits considered by the court-martial in determining the findings or sentence. The record of trial in every general and special court-martial shall include:

(1) A substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting;

(2) The original charge sheet or a duplicate;

(3) A copy of the convening order and any amending order;

(4) The request, if any, for trial by military judge alone; the accused's election, if any, of members under R.C.M. 903; and, when applicable, any statement by the convening authority required under R.C.M. 503(a)(2);

(5) Exhibits, or, if permitted by the military judge, copies, photographs, or descriptions of any exhibits that were received in evidence and any appellate exhibits;

(6) The Statement of Trial Results;

(7) Any action by the convening authority under R.C.M. 1109 or 1110; and

(8) The judgment entered into the record by the military judge."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(aa)-(bb), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(aa) R.C.M. 1112(f)(1) through (9) are redesignated as R.C.M. 1112(f)(2) through (10).

(bb) A new R.C.M. 1112(0(1) is inserted immediately after R.C.M. 1112(1) to read as follows:

"(1) A copy of all materials required to be provided to the military judge pursuant to R.C.M. 309(a)(3);".

Rule 1113. Sealed exhibits, proceedings, and other materials

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, §§ 3(m)-(n), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

m. R.C.M. 1113(c)(2) is amended by striking out "Undersecretary" and inserting in lieu thereof "Under Secretary".

n. The first sentence of R.C.M. 1113(d)(2)(C) is amended by inserting a comma between "concerned" and "unless".zz

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(v), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

v. R.C.M. 1113(d)(1) is amended to read as follows:

"(1) Death.

"(A) Manner carried out. A sentence to death which has been finally ordered executed shall be carried out in the manner prescribed by the Secretary concerned.

"(B) Action when accused lacks mental capacity. An accused lacking the mental capacity to understand the punishment to be suffered or the reason for imposition of the death sentence may not be put to death during any period when such incapacity exists. The accused is presumed to have such mental capacity. If a substantial question is raised as to whether the accused lacks capacity, the convening authority then exercising general court-martial jurisdiction over the accused shall order a hearing on the question. A military judge, counsel for the government, and counsel for the accused shall be detailed. The convening authority shall direct an examination of the accused in accordance with R.C.M. 706, but

the examination may be limited to determining whether the accused understands the punishment to be suffered and the reason therefor. The military judge shall consider all evidence presented, including evidence provided by the accused. The accused has the burden of proving such lack of capacity by a preponderance of the evidence. The military judge shall make findings of fact, which will then be forwarded to the convening authority ordering the hearing. If the accused is found to lack capacity, the convening authority shall stay the execution until the accused regains appropriate capacity."

Amendment of June 27, 1991

1. Source of the amendment: 1991 Amendments to the Manual for Courts-Martial, United States, § 1(p), Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).

2. Effective date of the amendment: "The amendment made to Rule for Courts-Martial 113(c)(1) [should be 1113(c)(1)—Ed.] shall apply only in cases in which the sentence is adjudged on or after July 6, 1991" *Id.* § 4(f).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 5 1991).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

p. R.C.M. 1113(c)(1) is amended in the final paragraph thereof to read as follows:

"A dishonorable or a bad-conduct discharge may be ordered executed only after a final judgment within the meaning of R.C.M. 1209 has been rendered in the case. If on the date of final judgment a servicemember is not on appellate leave and more than 6 months have elapsed since approval of the sentence by the convening authority, before a dishonorable or a bad-conduct discharge may be executed, the officer exercising general court-martial jurisdiction over the servicemember shall consider the advice of that officer's staff judge advocate as to whether retention of the servicemember would be in the best interest of the service. Such advice shall include the findings and sentence as finally approved, the nature and character of duty since approval of the sentence by the convening authority, and a recommendation whether the discharge should be executed.".

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(r)-(u), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

r. R.C.M. 1113(d)(2)(A) is amended by adding a new subparagraph (iii) as follows:

"(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57(e), has postponed the service of a sentence to confinement;"

s. R.C.M. 1113(d)(2)(A)(iii)—(iv) are redesignated 1113(d)(A)(iv)—(v), respectively.

t. R.C.M. 1113(d)(5) is deleted.

u. R.C.M. 1113(d)(6) is redesignated as subsection (5).

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex § 1(j), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: No edition of the M.C.M. includes the version of R.C.M. 1113 as amended on July 24, 2008 before its subsequent amendment. The version of R.C.M. 1113 in M.C.M. (2012 ed.) contains both the amendment of July 24, 2008 and the amendment of August 31, 2010.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(j) R.C.M. 1113 is amended by adding the following new subparagraph (d) and re-designating the current subparagraph (d) as subparagraph (e):

"(d) Self-executing punishments. Under regulations prescribed by the Secretary concerned, a dishonorable or bad conduct discharge that has been approved by an appropriate convening authority may be self-executing after final judgment at such time as:

(1) The accused has received a sentence of no confinement or has completed all confinement;

(2) The accused has been placed on excess or appellate leave; and,

(3) The appropriate official has certified that the accused's case is final. Upon completion of the certification, the official shall forward the certification to the accused's personnel office for preparation of a final discharge order and certificate."

Amendment of August 31, 2010

1. Source of the amendment: 2010 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(d)-(e), Exec. Order No. 54,263, 75 Fed. Reg. 54,263 (Aug. 31, 2010).

2. Effective date of the amendment: September 30, 2010. *See id.* § 2 (providing that the amendments take 30 days after the date if the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(d) R.C.M. 1113(d)(2)(A)(iii) is amended to read as follows:

"(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57a(b)(1), has postponed the service of a sentence to confinement."

(e) R.C.M. 1113(d)(2)(C) is amended by deleting the last two sentences, and replacing them with the following:

"No member of the armed forces, or person serving with or accompanying an armed force in the field, may be placed in confinement in immediate association with enemy prisoners or with other foreign nationals not subject to the code. The Secretary concerned may prescribe regulations governing the place and conditions of confinement."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1113 ("Execution of sentences") of the M.C.M. (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1113 ("Sealed exhibits and proceedings") and its accompanying Discussion are new and incorporate R.C.M. 1103A of the M.C.M. (2016 edition) as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018). R.C.M. 1113(b) conforms to changes in R.C.M. 1112(c) regarding certification of records of trial.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(tt)-(uu), 88 Fed. Reg. 50568 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(tt) R.C.M. 1113(b)(3)(C) is amended to read as follows:

"(C) *Disclosure*. Appellate counsel shall not disclose sealed materials in the absence of:

(i) prior authorization of the Judge Advocate General in the case of review under R.C.M. 1201 or 1210;

(ii) prior authorization of the appellate court before which a case is pending review under R.C.M. 1203 or 1204; or

(iii) prior authorization of the Judge Advocate General for a case eligible for review under R.C.M. 1203 or 1204."

(uu) R.C.M. 1113(b)(3)(D) is amended to read as follows:

"(D) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to R.C.M. 1307;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to R.C.M. 1201 and 1210;

(iii) Officers and attorneys designated by the Judge Advocate General;

(iv) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(v) The judges of the United States Court of Appeals for the Armed Forces professional staffs; and

(vii) Any other court of competent jurisdiction."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(wwww), 88 Fed. Reg. 50691 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The

President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(wwww) R.C.M. 1113(b)(l) is amended to read as follows:

"(1) *Prior to referral.* Prior to referral of charges, the following individuals may examine and disclose sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; a military judge detailed to an Article 30a proceeding; the general court-martial convening authority; and special trial counsel for the purposes of making a determination on referral."

Rule 1114. Transcription of proceedings

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of February 19, 1986

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 1(n), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date "with respect to all court-martial processes taken on and after that date" subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

n. R.C.M. 1114(c)(1) is amended by striking out "actions" in the last sentence and inserting in lieu thereof "orders".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(w), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> w. R.C.M. 1114 is amended as follows:
>
> (1) Subsection (b)(2) is amended by inserting the following at the end of the introductory paragraph thereof: "The subsequent action and the supplementary order may be the same document if signed personally by the appropriate convening or higher authority."; and
>
> (2) Subsection (c) is amended to read as follows:
>
> "(c) 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. Supplementary orders shall recite, verbatim, the action or order of the appropriate authority, or a summary thereof.
>
> "(2) Dates. The date of a promulgating order shall be the date of the action of the convening authority being promulgated, if any. An order promulgating an acquittal, a finding of not guilty only by reason of lack of mental responsibility, or a court-martial terminated before findings shall bear the date of its publication. A promulgating order shall state the date the sentence was adjudged, the date on which the acquittal or finding of not guilty only by reason of lack of mental responsibility was announced, or the date on which the proceedings were otherwise terminated.".

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(l), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

l. R.C.M. 1114(c)(2) is amended to read as follows:

"(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, a court-martial resulting in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, 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."

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(k), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(k) R.C.M. 1114(a) is amended by inserting the following as subsection (a)(4) :

"(4) Self-executing final orders. An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. The original action by a convening authority approving a discharge and certification by the appropriate official that the case is final may be forwarded to the accused's personnel office for preparation of a discharge order and certificate."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1114 ("Promulgating orders") of M.C.M. (2016 edition) and its accompanying Discussion are deleted.
>
> R.C.M. 1114 ("Transcription of proceedings") and its accompanying Discussion are new. R.C.M. 1114 implements Article 54(c), as amended by Section 5238 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the contents of a record of trial.

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(cc), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> . . .
>
> (cc) R.C.M. 1114(a) is amended to read as follows:
>
> "(a) Transcription of the complete record. A certified verbatim transcript of the record of trial shall be prepared in all general and special courts-martial in which the judgment includes a finding of guilty."

Rule 1115. Waiver or withdrawal of appellate review

The President promulgated the original version of this rule in the amendments made by Executive Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1115 and its accompanying Discussion are new. R.C.M. 1115 implements Article 61, as amended by Section 5325 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding waiver or withdrawal of appellate review.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(vv), 88 Fed. Reg. 50569 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (vv) R.C.M. 1115(a) is amended to read as follows:
>
> "(a) *In general*. After any general court-martial, except one in which the judgment entered into the record includes a sentence of death, and after any special court-martial in which the judgment entered into the record includes a finding of guilt, the accused may waive or withdraw the right to appellate review by a Court of Criminal Appeals. The accused may sign a waiver of the right to appeal at any time after entry of judgment and may withdraw an appeal at any time before such review is completed."

Rule 1116. Transmittal of records of trial for general and special courts-martial

The President promulgated the original version of this rule in the amendments made by Executive Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1116 ("Transmittal of records of trial for general and special courts-martial") and its accompanying Discussion are new. R.C.M. 1116 implements Articles 65 and 66, as amended by Sections 5329 and 5330 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the transmittal of records of trial in general and special courts-martial to the Judge Advocate General and the Courts of Criminal Appeals. Article 66 was further amended by Sections 531(j) and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(ww), 88 Fed. Reg. 50569 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (ww) R.C.M. 1116(c) is amended to read as follows:
>
> "(c) *General and special courts-martial not reviewed by a Court of Criminal Appeals*. General and special courts-martial with a finding of guilty not reviewed by a Court of Criminal Appeals under Article 66(b)(l) or (3) shall be reviewed under Article 65(d)(2)."

Rule 1117. Appeal of sentence by the United States

The President promulgated the original version of this rule in the amendments made by Executive Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1117 ("Appeal of sentence by the United States") and its accompanying Discussion are new. R.C.M. 1117 implements Article 56(d), as added by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016), as amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 3 § 1(x), 88 Fed. Reg. 50728 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 3 ("The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 . . . ."). NDAA FY 2022, § 539E(f), Public Law 117–81, 135 Stat. 1541, 1706 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (x) R.C.M. 1117 is amended to read as follows:
>
> "Rule 1117. Appeal of sentence by the United States
>
> (a) *In general.* With the approval of the Judge Advocate General concerned, the Government may appeal a sentence announced under R.C.M. 1007 to the Court of Criminal Appeals on the grounds that—
>
> (1) The sentence violates the law;
>
> (2) The sentence is a result of an incorrect application of sentencing parameters or criteria established under Article 56(c); or
>
> (3) The sentence is plainly unreasonable.
>
> (b) *Timing.*
>
> (1) An appeal under this rule must be filed within 60 days after the date on which the judgment of the court-martial is entered into the record under R.C.M. 1111.
>
> (2) Any request for approval must be submitted in sufficient time to obtain and consider submissions under R.C.M. 1117(c)(5).
>
> (c) *Approval process.*

(1) A request from the Government to the Judge Advocate General for approval of an appeal under this rule shall include a statement of reasons in support of an appeal under R.C.M. 1117(a)(l), (a)(2), or (a)(3), as applicable, based upon the information contained in the record before the sentencing authority at the time the sentence was announced under R.C.M. 1007.

(2) A statement ofreasons in support of an appeal under R.C.M. 1117(a)(l) shall identify the specific provisions oflaw at issue and the facts in the record demonstrating a violation of the law in the announced sentence under R.C.M. 1007.

(3) A statement of reasons in support of an appeal under R.C.M. 1117(a)(2) shall identify parameters or criteria at issue and the facts supporting how parameters or criteria were applied incorrectly.

(4) A statement of reasons in support of an appeal under R.C.M. 1117(a)(3) shall identify the facts in the record that demonstrate by clear and convincing evidence that the sentence announced under R.C.M. 1007 was plainly unreasonable.

(5) Prior to acting on a request from the Government, the Judge Advocate General shall transmit the request to the military judge who presided over the presentencing proceeding for purposes of providing the military judge, the parties, and any person who, at the time of sentencing, was a crime victim as defined by R.C.M. 1001(c)(2)(A), with an opportunity to make a submission addressing the statement of reasons in the Government's request.

(A) The military judge shall establish the time for the parties and crime victims to provide such a submission to the military judge and for the military judge to forward all submissions to the Judge Advocate General. The military judge shall ensure that the parties have not less than 7 days to prepare, review, and transmit such submissions.

(B) Submissions under this paragraph (R.C.M. 1117(c)(5)) shall not include facts beyond the record established at the time the sentence was announced under R.C.M. 1007.

(6) The decision of the Judge Advocate General as to whether to approve a request shall be based on the information developed under this rule.

(7) If an appeal is approved by the Judge Advocate General and submitted to the Court of Criminal Appeals under this rule, the following shall be included with the appeal: the statement of approval, the Government's request and statement of reasons under R.C.M. 1117(c), and any submissions under R.C.M. 1117(c)(5).

(d) *Contents of the record of trial.* Unless the record has been forwarded to the Court of Criminal Appeals for review under R.C.M. 1116(b), the record of trial for an appeal under this rule shall consist of—

(1) Any portion of the record in the case that is designated as pertinent by either of the parties;

(2) The information submitted during the presentencing proceeding; and

(3) Any information required by rule or order of the Court of Criminal Appeals."

Rule 1118. Review by the Judge Advocate General

The President promulgated the original version of this rule in the 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(dd), 89 Fed. Reg. 105343 (Dec. 20, 2024). It became effective on December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date). It is not yet published in any M.C.M.

Rule 1201. Review by the Judge Advocate General

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, §§ 3(o)-(p), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

> Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> o. The introductory clause of R.C.M. 1201(a)(2) is amended by inserting a dash after "which".
>
> p. R.C.M. 1201(b)(3)(C) is amended by striking "authority or unless" and inserting in lieu thereof "authority, unless".

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(x), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (1984 ed. & Change 3 1987).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

x. R.C.M. 1201(b)(3)(A) is amended by striking out the comma after "a Court of Military Review" and inserting in lieu thereof "or by the Judge Advocate General under subsection (b)(1) of this rule,".

Amendment of March 23, 1990

1. Source of the amendment: 1990 Amendments to the Manual for Courts-Martial, United States, § 1(m), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. Effective date of the amendment: April 1, 1990. *See id.* §§ 5, 5(d), 5(f) (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

m. R.C.M. 1201(b)(3)(C) is amended to read as follows:

"(C) Time limits on applications. Any application for review by the Judge Advocate General under Article 69 must be made on or before the last day of the two year period beginning on the date the sentence is approved by the convening authority or the date the findings are announced for cases which do not proceed to sentencing, unless the accused establishes good cause for failure to file within that time."

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(v), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

* * *

v. R.C.M. 1201(b)(3)(A) is amended to read as follows:

"(A) In general. Notwithstanding R.C.M. 1209, the Judge Advocate General may, sua sponte or, except when the accused has waived or withdrawn the right to appellate review under R.C.M. 1110, upon application of the accused or a person with authority to act for the accused, vacate or modify, in whole or in part, the findings, sentence, or both of a court-martial that has been finally reviewed, but has not been reviewed either by a Court of Military Review or by the Judge Advocate General under subsection (b)(1) of this rule, on the ground of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence."

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(w), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

w. R.C.M. 1201(b)(3)(A) is amended to read as follows:

"(A) In general. Notwithstanding R.C.M. 1209, the Judge Advocate General may, sua sponte or upon application of the accused or a person with authority to act for the accused, vacate or modify, in whole or in part, the findings, sentence, or both of a court-martial that has been finally reviewed, but has not been reviewed either by a Court of Criminal Appeals or by the Judge Advocate General under subsection (b)(1) of this rule, on the ground of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1201 and its accompanying Discussion are amended. R.C.M. 1201 implements Articles 65, 66, and 69, as amended by Sections 5329, 5330, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the post-trial review of certain records of trial by the Judge Advocate General. Article 66 was further amended by Sections 531(j) of and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(xx), 88 Fed. Reg. 50569 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

> (xx) R.C.M. 1201(h) is amended to read as follows:
>
> "(h) *Application for relief to the Judge Advocate General after final review*.
>
> (1) *In general*. Notwithstanding R.C.M. 1209, the Judge Advocate General may, upon application of the accused or a person with authority to act for the accused or receipt of the record pursuant to R.C.M. 1307(g):
>
> (A) With respect to a summary court-martial previously reviewed under R.C.M. 1307, modify or set aside, in whole or in part, the findings and sentence; or
>
> (B) With respect to a general or special court-martial previously reviewed under paragraph (a)(l) or (2), order such a court-martial to be reviewed under R.C.M. 1203 by the Court of Criminal Appeals.
>
> (2) Timing. To qualify for consideration under this subsection, an accused must submit
>
> an application not later than one year after—
>
> (A) In the case of a summary court-martial, the date of completion of review under R.C.M. 1307; or
>
> (B) In the case of a general or special court-martial, the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under R.C.M. 1116(b)(2).
>
> (3) Extension. The Judge Advocate General may, for good cause shown, extend the period for submission of an application under paragraph (h)(2) for a time period not to exceed three additional years. The Judge Advocate General may not consider an application

submitted more than three years after the applicable expiration date specified in paragraph (h)(2)."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(ee), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(ee) R.C.M. 1201(h)(1)(B) is amended to read 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 waiver 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."

Rule 1202. Appellate counsel

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1202(b)(2)(A) is amended and implements Article 65, as amended by Section 5329 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act

for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(J) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), addressing the requirement to detail appellate defense counsel to review cases eligible for direct appeal.

R.C.M. 1202(c) and its accompanying Discussion are new. R.C.M. 1202(c) implements Article 70, as amended by Section 5334 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), addressing the requirements regarding counsel learned in the law applicable to capital cases.

Amendment of July 28, 2023 (Annex 1)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(yy), 88 Fed. Reg. 50570 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(yy) R.C.M. 1202(b)(2)(A) is amended to read as follows:

"(A) In every general and special court-martial that includes a finding of guilty, an appellate defense counsel shall be detailed to review the case, unless the accused has waived the right to appeal under Article 61 or submits a written statement declining representation. Upon request, the detailed appellate defense counsel shall represent the accused in accordance with subparagraph (B)."

Amendment of July 28, 2023 (Annex 2)

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(xxxx), 88 Fed. Reg. 50691 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(xxxx) R.C.M. 1202(c) is amended as follows:

"(c) *Counsel in capital cases.* To the greatest extent practicable, in any case in which death is adjudged, at least one appellate defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to capital cases. Such counsel may, if necessary, be a civilian, and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security, as applicable."

Rule 1203. Review by a Court of Criminal Appeals

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(y), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (1984 ed. & Change 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> y. R.C.M. 1203(c) is amended by adding the following new subsection at the end thereof:
>
> "(5) Action when accused lacks mental capacity. An appellate authority may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the appellate authority may direct that the record be forwarded to an appropriate authority for an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The order of the appellate authority will instruct the appropriate authority as to permissible actions that may be taken to dispose of the matter. If the record is thereafter returned to the appellate authority, the appellate authority may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence -- including matters outside the record of trial -- that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the appellate authority shall stay the proceedings until the accused regains appropriate capacity, or take other appropriate action. Nothing in this subsection shall prohibit the appellate authority from making a determination in favor of the accused which will result in the setting aside of a conviction.".

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(x), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

x. R.C.M. 1203(c)(1) is amended to read as follows:

"(1) Forwarding by the Judge Advocate General to the Court of Appeals for the Armed Forces. The Judge Advocate General may forward the decision of the Court of Criminal Appeals to the Court of Appeals for the Armed Forces for review with respect to any matter of law. In such a case, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals and the order forwarding the case to be served on the accused and on appellate defense counsel. While a review of a forwarded case is pending, the Secretary concerned may defer further service of a sentence to confinement that has been ordered executed in such a case."

Amendment of May 20, 2016

1. Source of the amendment: 2016 Amendments to the Manual for Courts-Martial, United States, Annex § 1(yy), Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016).

2. Effective date of the amendment: May 20, 2016. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

(yy) A new R.C.M. 1203(g) is inserted immediately after R.C.M. 1203(f) and reads as follows:

"(g) Article 6b(e) petition for writ of mandamus. The Judge Advocates General shall establish the means by which the petitions for writs of mandamus described in Article 6b(e) are forwarded to the Courts of Criminal Appeals in accordance with their rule-making functions of Article 66(f)."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1203 and its accompanying Discussion are amended and implements Articles 65, 66, and 69, as amended by Sections 5329, 5330, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding review by a Court of Criminal Appeals and minimum tour lengths for appellate military judges. Article 66 was further amended by Sections 531(j) of and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(yyyy)-(zzzz), 88 Fed. Reg. 50694 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (yyyy) R.C.M. 1203(e) is amended to read as follows:
>
> "(e) *Action on cases reviewed by a Court of Criminal Appeals.*
>
> (1) *Forwarding by the Judge Advocate General to the Court of Appeals for the Armed*
>
> *Forces.* The Judge Advocate General may forward the decision of the Court of Criminal Appeals to the Court of Appeals for the Armed Forces for review with respect to any matter of law. In such a case, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals and the order forwarding the case to be served on the

accused and on appellate defense counsel. While a review of a forwarded case is pending, the Secretary concerned may defer further service of a sentence to confinement that has been ordered executed in such a case.

(2) *Action when findings are set aside.* In a case reviewed by the Court of Criminal Appeals under this rule in which it has set aside the findings and which is not forwarded to the Court of Appeals for the Armed Forces under R.C.M. 1203(e)(l), the Judge Advocate General shall instruct an appropriate authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has authorized a rehearing on findings, the record shall be sent to an appropriate referral authority.

(A) If the Court has authorized a rehearing, but the convening authority to whom the record is transmitted finds a rehearing impracticable, the convening authority shall dismiss the charges.

(B) If the Court has authorized a rehearing, but the special trial counsel to whom the record is transmitted finds a rehearing impracticable, special trial counsel shall dismiss the charges.

(3) *Action when sentence is set aside.* In a case reviewed by the Court of Criminal Appeals under this rule in which it has set aside the sentence and which is not forwarded to the Court of Appeals for the Armed Forces under R.C.M. 1203(e)(l), the Judge Advocate General shall instruct an appropriate authority to modify the judgment in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has authorized a rehearing on sentence, the record shall be sent to an appropriate referral authority.

(A) If the convening authority finds a rehearing impracticable, the applicable convening authority shall order either that a sentence of no punishment be imposed or that the applicable charges be dismissed.

(B) If special trial counsel finds a rehearing impracticable, special trial counsel may dismiss the applicable charges. If special trial counsel makes a determination not to dismiss the applicable charges, the convening authority shall order that a sentence of no punishment be imposed.

(4) *Action when sentence is affirmed in whole or part.*

(A) *Sentence including death.* If the Court of Criminal Appeals affirms any sentence which includes death, the Judge Advocate General shall transmit the record of trial and the decision of the Court of Criminal Appeals directly to the Court of Appeals for the Armed Forces when any period for reconsideration provided by the rules of the Courts of Criminal

Appeals has expired.

(B) *Other cases.* If the Court of Criminal Appeals affirms any sentence other than one which includes death, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals to be served on the accused in accordance with R.C.M. 1203(f).

(5) *Remission or suspension.* If the Judge Advocate General believes that a sentence as affirmed by the Court of Criminal Appeals, other than one which includes death, should be

remitted or suspended in whole or part, the Judge Advocate General may, before taking action under R.C.M. 1203(e)(l) or (4), transmit the record of trial and the decision of the Court of Criminal Appeals to the Secretary concerned with a recommendation for action under Article 74 or may take such action as may be authorized by the Secretary concerned under Article 74(a).

(6) *Action when accused lacks mental capacity.* In a review conducted under R.C.M. 1203(b) or (c), the Court of Criminal Appeals may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the Court of Criminal Appeals may direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The Court may further order a remand under R.C.M. 810(f) as may be necessary. If the record is thereafter returned to the Court of Criminal Appeals, the Court of Criminal Appeals may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence-including matters outside the record of trial-that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the Court of Criminal Appeals shall stay the proceedings until the accused regains appropriate capacity or take other appropriate action. Nothing in this subsection shall prohibit the Court of Criminal Appeals from making a determination in favor of the accused which will result in the setting aside of a conviction."

(zzzz) R.C.M. 1203(1)(1) is amended to read as follows:

"(1) *Notification of decision.* The accused shall be notified of the decision of the Court of Criminal Appeals in accordance with regulations prescribed by the Secretary concerned."

Rule 1204. Review by the Court of Appeals for the Armed Forces

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(j), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(j) R.C.M 1204 (c)(2) is amended to read as follows:

"(2) Sentence requiring approval of the President.

(A) If the Court of Appeals for the Armed Forces has affirmed a sentence that must be approved by the President before it may be executed, the Judge Advocate General shall transmit the record of trial, the decision of the Court of Criminal Appeals, the decision of the Court of Appeals for the Armed Forces, and the recommendation of the Judge Advocate General to the Secretary concerned.

(B) If the Secretary concerned is the Secretary of a military department, the Secretary concerned shall forward the material received under paragraph (A) to the Secretary of Defense, together with the recommendation of the Secretary concerned. The Secretary of Defense shall forward the material, with the recommendation of the Secretary concerned and the recommendation of the Secretary of Defense, to the President for the action of the President.

(C) If the Secretary concerned is the Secretary of Homeland Security, the Secretary concerned shall forward the material received under paragraph (A) to the President, together with the recommendation of the Secretary concerned, for the action of the President."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1204(a)(2) is amended and implements Article 67, as amended by Section 5331 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires that the Judge Advocate General provide appropriate notification to all other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps before certifying a case to the Court of Appeals for the Armed Forces.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(aaaaa)-(ccccc), 88 Fed. Reg. 50694 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(aaaaa) R.C.M. 1204(c)(l) is amended to read as follows:

"(1) *In general.* After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further proceedings in accordance with the decision of the court. Otherwise, unless the decision is subject to review by the Supreme Court, or there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the appropriate authority to take action in accordance with that decision. If the Court has authorized a rehearing, but the convening authority to whom the record is transmitted finds a rehearing impracticable, the convening authority may dismiss the charges. If a special trial counsel referred the affected charges, the special trial counsel shall determine if a rehearing is impracticable. If a special trial counsel determines a rehearing is impracticable, the special trial counsel shall dismiss the charges."

(bbbbb) R.C.M. 1204(c)(4) amended to read as follows:

"(4) *Decisions subject to review by the Supreme Court.* If the decision of the Court of Appeals for the Armed Forces is subject to review by the Supreme Court, the Judge Advocate General shall take no action under R.C.M. 1204(c)(l), (2), or (3) until:

(A) the time for filing a petition for a writ of certiorari with the Supreme Court has expired; or

(B) the Supreme Court has denied any petitions for writ of certiorari filed in the case."

(ccccc) A new R.C.M. 1204(c)(5) is inserted immediately after R.C.M. 1204(c)(4) to read as follows:

"(5) Upon the occurrence of an event described by R.C.M. 1204(c)(4)(A) or (B), the Judge Advocate General shall take action in accordance with R.C.M. 1204(c)(l), (2), or (3). If the Supreme Court issues a writ of certiorari, the Judge Advocate General shall take action under R.C.M. 1205(b)."

Rule 1205. Review by the Supreme Court

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1205(a) is amended and changes the reference to "Article 67(h)" and replaces it with "Article 67a." Technical corrections are made to references to Article 67(a)(1), (2), and (3).

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(ff), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 22, 2024. *See id.* § 4 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> . . .
>
> (ff) R.C.M. 1205(a) is amended to read as follows:
>
> "(a) Cases subject to review by the Supreme Court. Under 28 U.S.C. § 1259 and Article 67a, decisions of the Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:
>
> (1) Cases reviewed by the Court of Appeals for the Armed Forces under Article 67(a)(1);
>
> (2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under Article 67(a)(2);

(3) Cases in which the Court of Appeals for the Armed Forces granted or refused to grant a petition for review under Article 67(a)(3); and

(4) Cases other than those described in paragraphs (a)(1), (2), and (3) of this rule in which the Court of Appeals for the Armed Forces granted or refused to grant relief."

Rule 1206. Powers and responsibilities of the Secretary

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 1207. Sentences requiring approval by the President

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 1208. Restoration

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1208(b) is amended and implements Article 75, as amended by Section 5337 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). R.C.M. 1208 now requires that in certain cases where an executed part of a court-martial sentence is set aside pending

a rehearing, new trial, or other trial, that those punishments shall not be enforced from the effective date of the order setting aside that punishment.

R.C.M. 1208(a), 1208(b) and the Discussion to R.C.M. 1208(b) are amended and insert a reference to entry of a new judgment in the case.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(zz), 88 Fed. Reg. 50570 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(zz) A new R.C.M. 1208(c) is inserted immediately after R.C.M. 1208(b) to read as follows:

"(c) *Effective date of sentences*. Once a sentence has been set aside or disapproved, the effective date of a sentence that relates to that portion which was set aside or disapproved shall be calculated from the date a new sentence relating to that portion is adjudged at a new trial, other trial, or rehearing and shall be in accordance with R.C.M. 1102."

Rule 1209. Finality of courts-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 3(q), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. Effective date of the amendment: Not stated.

3. First publication of the amended rule: M.C.M. 1984 (Change No. 1 1984).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

q. R.C.M. 1209(a)(2)(A) is amended by striking out the third comma and inserting in lieu thereof a semicolon.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments in Annex 2 take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1209 and its Discussion are amended and implement Articles 64, 65, and 69, as amended by Sections 5328, 5329, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the finality of courts-martial.

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(gg), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 22, 2024. *See id.* § 4 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> . . .
>
> (gg) R.C.M. 1209(a)(1) is amended to read as follows:
>
> "(1) General and special courts-martial. A conviction in a general or special court- martial is final when—
>
> (A) Review is completed under R.C.M. 1201(a) (Article 65);
>
> (B) Review is completed by a Court of Criminal Appeals and—
>
> (i) The accused does not file a timely petition for review by the Court of Appeals for the Armed Forces and the case is not otherwise under review by that court; or
>
> (ii) The Court of Appeals for the Armed Forces refused to grant review of such a petition or review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces, and—

(I) A petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) A petition for a writ of certiorari is denied or otherwise rejected by the Supreme Court; or

(III) Review is otherwise completed in accordance with the judgment of the Supreme Court."

Rule 1210. New trial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 1(q), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

y. R.C.M. 1210(a) is amended by adding at the end thereof the following sentence:

"A petition for a new trial of the facts may not be submitted on the basis of newly discovered evidence when the petitioner was found guilty of the relevant offense pursuant to a guilty plea."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1210 is amended and implements Article 73, as amended by Section 5336 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which increases the time in which an accused must file a petition for a new trial from two years to three years after entry of judgment. R.C.M. 1210 is amended and includes references to the entry of judgment in accordance with the addition of Article 60c, as reflected in Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ddddd), 88 Fed. Reg. 50696 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (ddddd) R.C.M. 1210(h)(l) is amended to read as follows:
>
> "(1) *Forwarding to appropriate authority.* When a petition for a new trial is granted, the Judge Advocate General shall select and forward the case to an appropriate authority for disposition."

Rule 1301. Summary courts-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 1(s), Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(s) R.C.M. 1301(a) is amended by inserting the following after the second sentence:

"Summary courts-martial shall be conducted in accordance with the regulations of the military service to which the accused belongs."

Amendment of June 17, 2015

1. Source of the amendment: 2015 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(xx)-(yy), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. Effective date of the amendment: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(xx) R.C.M. 1301(c) is amended to insert the following before the rule's text:

"[Note: R.C.M. 1301(c) applies to offenses committed on or after 24 June 2014.]"

(yy) R.C.M.1301(c) is amended to number the current paragraph as (1), and a new R.C.M. 1301(c)(2) is inserted after the new R.C.M. 130l(c)(l) and reads as follows:

"(2) Notwithstanding subsection (c)(l) of this Rule, summary courts-martial do not have jurisdiction over offenses under Articles 120(a), 120(b), 120b(a), 120b(b), forcible sodomy under Article 125, and attempts thereof under Article 80. Such offenses shall not be referred to a summary court-martial."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1301(b) is amended and implements Article 20, as amended by Section 5164 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which clarifies that a summary court-martial is not a criminal forum and a finding of guilt does not constitute a criminal conviction. This change does not deprive an accused at a summary court-martial of the protections previously applicable at a summary court-martial, to include the right to confront witnesses.
>
> R.C.M. 1301(c) and the Discussion to R.C.M. 1301(c) are amended and align with the prohibition against trying certain offenses at a summary court-martial and the elimination of the discrete offense of forcible sodomy in accordance with Sections 5162 and 5439 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(eeeee)-(fffff), 88 Fed. Reg. 50696 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (eeeee) R.C.M. 1301(a) is amended to read 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."

(fffff) R.C.M. 1301(c)(l) is amended to read as follows:

"(1) Subject to Chapter II and R.C.M. 1301(c)(2), summary courts-martial have the power to try persons subject to the UCMJ, except commissioned officers, warrant officers, cadets, aviation cadets, and midshipmen, for any non-capital offense made punishable by the UCMJ."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(hh)-(ii), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(hh) R.C.M. 1301(a) is amended to read 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."

(ii) R.C.M. 1301(e) is amended to read as follows:

"(e) Counsel. The accused at a summary court-martial has a right to military defense counsel. The accused may expressly waive the right to be represented by defense counsel and may thereafter conduct the defense personally. Such waiver shall be accepted by the summary court martial officer only upon finding that the accused is competent to understand the disadvantages of self-representation and that the waiver is voluntary and understanding. The right of the accused to conduct the defense personally may be revoked if the accused is disruptive or fails to follow basic rules of decorum and procedure."

Rule 1302. Convening a summary court-martial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(ggggg), 88 Fed. Reg. 50696 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

(ggggg) R.C.M. 1302(a)(3) is amended to read as follows:

"(3) The commander of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force."

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(jj), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(jj) R.C.M. 1302(a) is amended to read 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 if the superior competent authority considers it desirable unless such superior competent authority is the only commissioned officer with the command, in which case it shall be considered desirable that the matter be elevated until it reaches a superior competent authority whose command includes more than one commissioned officer."

Rule 1303. Right to object to trial by summary court-martial

The President promulgated this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not amended the rule.

Rule 1304. Trial procedure

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1304(a)(4) and the accompanying Discussion are new and address the rights of a victim at summary courts-martial in accordance with Article 6b as amended by Section

5105 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(a), 1081(a)(22) and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 11591, 131 Stat. 1283 (2017). The Discussion accompanying R.C.M. 1304(a)(4)(E) clarifies the meaning of the term "victim" as it pertains to this provision. R.C.M. 1304(b)(2)(F)(ii) is amended and directs the summary court-martial to use the procedures in R.C.M. 1001 and 1002 and the principles in the remainder of Chapter X in determining a sentence, with some exceptions.

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 1(aaa)-(bbb), 88 Fed. Reg. 50571 (Aug. 2, 2023)

2. Effective date of the amendment: July 28, 2023. *See id.* § 1(b) ("These amendments in Annex 1 shall take effect on the date of this order.").

3. *First publication of the amended rule*: M.C.M. (2023 ed.)

4. Text or summary of the amendment:

(aaa) R.C.M. 1304(b)(2)(F) is amended to read as follows:

"(F) *Findings and sentence.*

(i) The summary court-martial shall apply the principles in R.C.M. 918 in determining the findings. The summary court-martial shall announce the findings to the accused in open session.

(ii) The summary court-martial shall follow the procedures in R.C.M. 1001 and 1002 and apply the principles in the remainder of Chapter X in determining a sentence, except as follows:

(I) If an accused is found guilty of more than one offense, a summary court-martial shall determine the appropriate confinement and fine, if any, for all offenses of which the accused was found guilty. The summary court-martial shall not determine or announce separate terms of confinement or fines for each offense; and

(II) The summary court-martial shall announce the sentence to the accused in open session.

(iii) If the sentence includes confinement, the summary court-martial shall advise the accused of the right to apply to the convening authority for deferment of the service of the confinement.

(iv) If the accused is found guilty, the summary court-martial shall advise the accused of the rights under R.C.M. 1306(a) and (h) and R.C.M. 1307(h) after the sentence is announced.

(v) The summary court-martial shall, as soon as practicable, inform the convening authority of the findings, sentence, recommendations, if any, for suspension of the sentence, and any deferment request.

(vi) If the sentence includes confinement, the summary court-martial shall cause the delivery of the accused to the accused's commanding officer or the commanding officer's designee."

(bbb) R.C.M. 1304(b)(2)(G) is deleted.

Amendment of December 20, 2024

1. Source of the amendment: 2024 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14130, Annex § 1(kk)-(oo), 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. Effective date of the amendment: December 20, 2024. *See id.* § 3 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: Not yet published in any M.C.M.

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

. . .

(kk) R.C.M. 1304(b)(1)(M) is amended to read as follows:

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

(ll) R.C.M. 1304(b)(1)(N) is amended to read as follows:

"(N) The accused's right to object to trial by summary court-martial; and".

(mm) A new R.C.M. 1304(6)(1)(0) is inserted immediately after 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."

(nn) R.C.M. 1304(b)(2)(B) through (F) are redesignated as R.C.M. 1304(b)(2)(C) through (G).

(oo) A new R.C.M. 1304(b)(2)(B) is inserted immediately after 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."

Rule 1305. Record of trial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 1(z), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. Effective date of the amendment: March 12, 1987. *See id.* §§ 5, 5(e), 5(g) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 3 1987).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:
>
> * * *
>
> z. R.C.M. 1305(b)(2) is amended by striking out "number of previous convictions considered and the".

Amendment of May 12, 1995

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, §§ 2(w)-(x), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. Effective date of the amendment: June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

> Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:
>
> * * *
>
> w. R.C.M. 1305(d) is deleted.
>
> x. R.C.M. 1305(e) is redesignated as subsection (d).

Amendment of April 11, 2002

1. Source of the amendment: 2002 Amendments to the Manual for Courts-Martial, United States, § 3(w), Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. Effective date of the amendment: May 15, 2002. *See id.* §§ 6(a), (d)-(e) (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings begun before that date).

3. First publication of the amended rule: M.C.M. (2002 ed.).

4. Text of the amendment:

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

w. R.C.M 1305(d)(2) is amended to read as follows:

"(2) Forwarding to the convening authority. The original and one copy of the record of trial shall be forwarded to the convening authority after compliance with subsection (d)(1) of this rule.".

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(j), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * * (j) R.C.M. 1305(c) is amended to read as follows:

"(c) Authentication. The summary court-martial shall authenticate the record by signing the original record of trial."

Amendment of July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(l)-(m), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(l) R.C.M. 1305(b) is amended by changing the first sentence to read as follows:

"(b) Contents. The summary court-martial shall prepare a written record of trial, which shall include:"

(m) R.C.M. 1305(c) is amended to read as follows:

"(c) Authentication. The summary court-martial shall authenticate the record by signing the record of trial. An electronic record of trial may be authenticated with the electronic signature of the summary court-martial."

(n) R.C.M. 1305(d)(1)(A) is amended to read as follows:

"(A) Service. The summary court-martial shall cause a copy of the record of trial to be served on the accused as soon as it is authenticated. Service of an authenticated electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service under this rule."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1305(c) and (d) and the Discussion accompanying R.C.M. 1305(c), (d), and (e) are amended and reflect Article 54, as amended by Section 5238 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a certified record of trial in a summary court-martial.

R.C.M. 1305(d) is amended to include a cross-reference to procedures for classified information in the record of trial, and conforms with changes to Article 54 to provide procedures for the correction of a record of trial in a summary court-martial.

Rule 1306. Post-trial procedure, summary court-martial

The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.

Amendment of December 3, 2004

1. Source of the amendment: 2004 Amendments to the Manual for Courts-Martial, United States, § 2(k), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. Effective date of the amendment: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2005 ed.).

4. Text of the amendment:

> Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> (k) R.C.M. 1306(b)(1) is amended to read as follows:
>
> "(1) Who shall act. Except as provided herein, the convening authority shall take action in accordance with R.C.M. 1107. The convening authority shall not take action before the period prescribed in R.C.M. 1105(c)(2) has expired, unless the right to submit matters has been waived under R.C.M. 1105(d)."

Amendment July 24, 2008

1. Source of the amendment: 2008 Amendments to the Manual for Courts-Martial, United States, Annex §§ 1(o), Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008).

2. Effective date of the amendment: August 23, 2008. *See id.* § 2 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2012 ed.).

4. Text or summary of the amendment:

> Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:
>
> * * *
>
> (o) R.C.M. 1306(b)(3) is amended to read as follows:
>
> "(3) Signature. The action on the record of trial shall be signed by the convening authority. The action on an electronic record of trial may be signed with the electronic signature of the convening authority."

Amendment of June 13, 2014

1. Source of the amendment: 2014 Amendments to the Manual for Courts-Martial, Annex § 1(v), Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014).

2. Effective date of the amendment: June 13, 2014. *See id.* § 2 (providing that the amendments take effect on the date of the order, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (2016 ed.).

4. Text or summary of the amendment:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(v) R.C.M. 1306(a) is amended to read as follows:

"(a) Matters submitted.

(1) By a crime victim. After a sentence is adjudged, a crime victim may submit a written statement to the convening authority in accordance with R.C.M. 1105A. A statement submitted by a crime victim shall be immediately served on the accused.

(2) 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."

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

R.C.M. 1306 and its accompanying Discussion are amended and consolidate the post-trial process for summary courts-martial into one rule and removes most of the prior cross references to the post-trial process prescribed for general and special courts-martial. The rule is further amended to reflect the changes to post-trial and appellate procedures in summary courts-martial required by the changes to Articles 60b, 64, and 69 as amended by Sections 5323, 5328, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Amendment of July 28, 2023

1. Source of the amendment: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 2(hhhhh), 88 Fed. Reg. 50697 (Aug. 2, 2023).

2. Effective date of the amendment: December 27, 2023. *See id.* § 2 ("The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81."); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) ("[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date."); *id.* § 539C(b)(1) ("The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.").

3. First publication of the amended rule: M.C.M. (2024 ed.)

4. Text or summary of the amendment:

> (hhhhhh) R.C.M. 1306(b)(3) is amended to read as follows:
>
> "(3) *Action on sentence.* The convening authority shall take action on the sentence. The convening authority may approve the sentence as adjudged or disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence. The convening authority shall approve the sentence that is warranted by the circumstances of the offense and appropriate for the accused."

Rule 1307. Review of summary courts-martial by a judge advocate

The President promulgated the original version of this rule in the amendments made by Executive Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018), described below:

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Executive Order 13,825, Annex 2, § 2, 2018, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5 (providing that the amendments take effect on January 1, 2019, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2019 ed.).

4. Text or summary of the amendment: Annex 2, § 2 of Executive Order 13,825 replaced the entire text of the Rules for Courts-Martial. The following summary of the changes to this rule appears in Appendix 15 of M.C.M. (2019 ed.):

> R.C.M. 1307 and its accompanying Discussion are new. R.C.M. 1307 implements Articles 64 and 69, as amended by Sections 5328 and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No.

114-328, 130 Stat. 2000 (2016), which provides for review of the record of trial of a summary court-martial by a judge advocate and permits an accused to apply for appellate review for correction of legal error.