

APPELLATE AND POST-TRIAL RIGHTS AND POST-TRIAL ADMINISTRATIVE PROCESSING

Rule for Courts-Martial (R.C.M.) 1010 requires your defense counsel to advise you on your post-trial and appellate rights. You may also request that the military judge explain all or any portion of your appellate rights in open court prior to adjournment of your court-martial.

Access to the Court-Martial Record

Pursuant to R.C.M. 1106(c), upon adjournment of your court-martial, you have the right to request a copy of the recording of all open sessions of the court-martial and a copy of, or access to, the evidence admitted at the court-martial, and a copy of the appellate exhibits. You may request the recording, evidence, and exhibits be provided to you or your counsel. Neither you nor your counsel will be provided access to sealed or classified court-martial material or recordings unless authorized by R.C.M. 1106 or R.C.M. 1113. You may use the materials provided to prepare matters for consideration by the Convening Authority (CA).

Submission of Matters to the Convening Authority

Pursuant to Article 38(c), Uniform Code of Military Justice (UCMJ), and R.C.M. 1106, within 10 calendar days after the announcement of the sentence, you have a right to submit matters to the CA before that officer takes action on your case. If you elect to submit matters, you must do so within 10 calendar days after the announcement of the sentence, though the CA may extend this for not more than additional 20 calendar days, for good cause shown. Your defense counsel will normally compile and submit the matters on your behalf in consultation with you. Failure to submit matters within the time prescribed waives the right to submit matters later. If a crime victim submits matters for the CA's consideration, you will be given an additional 5 calendar days from receipt of those matters to submit a rebuttal to those matters. You may not seek an extension of time to submit a rebuttal to matters submitted by a crime victim. In either submission, you are prohibited from including matters that relate to the character of a crime victim unless such matters were admitted as evidence at trial.

Possible Action by the Convening Authority

a. The CA has authority to act only in certain cases. For cases involving convictions for offenses committed only after 1 January 2019, under Article 60a, UCMJ, and R.C.M. 1109 the CA *cannot* act on the *findings* if any of the following applies:

- you have been convicted of a sexual offense listed in Articles 120(a), 120(b) or 120b, UCMJ;

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- the *authorized maximum confinement* for any *offense* of which you have been convicted exceeds two years, regardless of the court's jurisdictional maximum;
- the *adjudged sentence* includes a punitive discharge (Dismissal, Bad Conduct Discharge, or Dishonorable Discharge); or
- the *adjudged confinement* is more than six months.

In those cases, the CA may take action on the *sentence* only as provided in R.C.M. 1109(c).

b. In all other cases involving convictions for offenses committed only after 1 January 2019, the CA may, but is not required to, take action on the findings and sentence and grant clemency within the limits of Articles 60a or 60b, UCMJ, and R.C.M. 1109 or 1110. In those cases, the CA may take:

- no action;
- action on the findings, if allowed by law; or
- action on the sentence, if allowed by law.

c. In any case involving a conviction for an offense committed before 1 January 2019, the CA may take action on either the findings of guilty or sentence adjudged within the limits of Article 60, UCMJ that was in effect at the time of the earliest offense for which you were convicted. The action to be taken on the findings and sentence may be limited by Article 60, UCMJ, depending on the date of the offense, the type of offense, the maximum punishment of the offense, the recommendation of the trial counsel, the existence of a pretrial agreement, and the punishment awarded. When authorized to act, the CA possesses the sole discretion to approve, disapprove, commute, or suspend the sentence in whole or in part; set aside a finding of guilty; order a rehearing on a finding of guilty; or approve a lesser included offense of a finding of guilty.

d. If the CA has the power to approve, disapprove, commute, or suspend the sentence in whole or in part, set aside a finding of guilty, order a rehearing on a finding of guilty, or approve a lesser included offense of a finding of guilty, that decision is within the sole discretion of the CA. The CA may suspend a sentence in certain cases when recommended by a military judge or by the trial counsel. The CA is not required to review the case for legal errors or factual sufficiency, but may order a rehearing only in the circumstances provided for in Article 60b, UCMJ.

In the post-trial process, the CA and the Military Judge may never increase the severity of the sentence and are not empowered to reverse a finding of not guilty.

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Entry of Judgment

Pursuant to Article 60c, UCMJ, and R.C.M. 1111, the military judge will complete the Entry of Judgment (EOJ) and attach it to the record of trial. The EOJ reflects the result of your court-martial as well as the results of the CA's action. The EOJ will include the final sentence, which will account for any modifications made by the CA during the post-trial review process or any post-trial ruling, order, or other determination by the military judge. The EOJ will also include the total amount of sentence credit, if any, to be applied to a sentence as of the date of the EOJ. The EOJ terminates the trial proceedings, ends any period of deferment, and initiates the post-trial review process. A copy of the EOJ will be provided to you or your defense counsel, according to your election below.

Certified Record of Trial

Pursuant to Article 54, UCMJ, and R.C.M. 1112(b), the certified record of trial (ROT) is comprised of an audio recording of all open sessions, all evidence admitted, and all appellate exhibits. A copy of the certified ROT will be assembled and provided to either you or your defense counsel, according to your election below. Recordings and exhibits that are sealed or contain classified materials will not be provided to you. Should you need to review those materials, you or your defense counsel must submit a request pursuant to R.C.M. 1106 or R.C.M. 1113.

Appellate and Post-Trial Review

a. **Automatic Review.** Pursuant to Article 66(b)(3), UCMJ, if your sentence includes death, dismissal, a punitive discharge or confinement for two years or more, the Navy Marine-Corps Court of Criminal Appeals (NMCCA) will automatically review your case.

b. **Eligible for Review.** Pursuant to Article 66(b)(1)(A), if your sentence is not subject to automatic review, you may file an appeal to have the NMCCA review your case. Under Article 66(b)(1), UCMJ, this appeal must be timely. Article 66(c), UCMJ, provides that an appeal is timely if filed before the later of: (1) the end of the 90-day period beginning on the date you are provided notice of your right to appeal in accordance with Article 65(c)(1), or (2) the date set by the NMCCA by rule or order. With respect to an appeal submitted to the NMCCA for review, the scope of review is limited to the findings and sentence as entered into the record. Upon a specific showing by you that there was a deficiency of proof, the NMCCA may also consider whether the findings are correct in fact. The NMCCA has the authority to set aside findings, set aside the sentence, modify the sentence to a lesser sentence, affirm a lesser-included offense, order additional proceedings, and/or order that the charges be dismissed.

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c. **Review beyond NMCCA.** Pursuant to Article 67(a), UCMJ, after completion of NMCCA review, upon your request or that of the Judge Advocate General (JAG), the Court of Appeals for the Armed Forces (CAAF) may review your case. You may petition the CAAF within 60 days from the earlier of (1) the date you are notified of the NMCCA's decision, or (2) the date on which a copy of the NMCCA decision is deposited in the mail for delivery to you. CAAF review of your petition is discretionary in non-death penalty cases and, if it grants your petition, CAAF may act only with respect to the findings and sentence as entered into judgment and as affirmed or set aside as incorrect in law by the NMCCA.

d. **Review by a Judge Advocate.** If your case is not subject to automatic review by the NMCCA and you do not seek direct appeal, a judge advocate will review your case in accordance with Article 65(d), UCMJ. The review is limited to whether the court had jurisdiction over you and the offense; whether the charge and specification stated an offense; and whether the sentence was within the limits prescribed by law. You may also submit written allegations of error for review. Relief recommended by this review is forwarded to the JAG for consideration, who may set aside the findings or sentence, in whole or in part.

e. **Waiver of Appellate Review.** You may waive your right to appellate review if your case qualifies for automatic review, or you may withdraw your case from appellate review at a later time. **This is a significant decision and you should fully understand your appellate rights and the implications of a waiver before you forego appellate review.** You have the right to the advice and assistance of counsel in exercising or deciding to waive your appellate rights. This may include the assistance of an appellate defense counsel in coordination with your trial defense counsel. If you submit a waiver or withdraw from the appellate review process, your case will be reviewed under Article 65(d)(3), UCMJ. The review is limited to whether the court had jurisdiction over you and the offense; whether the charge and specification stated an offense; and whether the sentence was within the limits prescribed by law.

f. **Review by the JAG.** Under Article 69, UCMJ, within one year after the end of the 90-day period beginning on the date you are provided your appellate rights pursuant to Article 65(c), the JAG may review your application to send your case to the NMCCA. In the event that you submit a waiver or withdrawal of appellate review under Article 61 before being provided notice of these rights, your application must be submitted to the JAG no later than one year after the entry of judgment under Article 60c. The JAG may extend the period of submission, for good cause shown, but may not consider an application submitted more than three years after the end of the applicable submission period. The scope of review is limited to whether your withdrawal or waiver of appellate review was invalid under the law. If the JAG determines that it was invalid, he or she will send your case to the NMCCA for review under Article 66, UCMJ.

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Right to Counsel

a. **Post-trial Matters.** It is your trial defense counsel's responsibility to represent you until the EOJ. Your trial defense counsel is responsible for examining the Statement of Trial Results, the findings, the sentence, the CA's Action, and the EOJ for errors or legal insufficiency. It is your trial defense counsel's obligation to advise and assist you in preparing and submitting post-trial matters or motions, if applicable, to the military judge before the EOJ, or to correct the EOJ within five days after it is provided to you.

b. **Article 65(d), UCMJ.** If your case is not subject to automatic review and you do not seek direct appeal of your case at the NMCCA, your trial defense counsel will continue to represent you through the Article 65(d), UCMJ, review process. Your trial defense counsel will also represent you through a subsequent Article 69, UCMJ, review, subject to such review's limitations discussed above if you elect this additional review.

c. **Appellate Defense Counsel.** If your case is subject to automatic review by the NMCCA or you do seek direct appeal, you have the right to a military appellate defense counsel to represent you at no cost. Detailed appellate defense counsel represent you on appeals before the NMCCA, the CAAF, and the Supreme Court of the United States.

- Special Power of Attorney. If you wish to be represented by a military appellate defense counsel before the NMCCA, the CAAF, or the Supreme Court you may sign a special power of attorney, which authorizes a detailed military appellate defense counsel to take actions on your behalf during the appellate review process. The original, signed special power of attorney must be notarized and attached to the original record of trial. If you do not sign the special power of attorney now, you do not waive the right to a military appellate defense counsel at a later date.
- How to Contact Appellate Defense Counsel. If you qualify for appellate representation and have not been contacted by your military appellate defense attorney 120 days after the conclusion of your trial, you may contact the Navy-Marine Corps Appellate Defense Division at 1-202-685-7296 or 1-202-685-7395. It is your responsibility to affirmatively provide updated contact information to your appellate defense counsel throughout the appellate process. This is critical to ensuring an appellate defense counsel can form the necessary attorney-client relationship and contact you regarding your case.
- Military Appellate Defense Counsel will Contact You. The Navy and Marine Appellate Review Activity (NAMARA) will make reasonable efforts to contact you when your case is ready for appellate review. **Should NAMARA be**

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unable to contact you and if you elected not to sign the special power of attorney, the NMCCA will conduct the automatic review of your case under Article 66(b)(3) without input from you. No appellate attorney at NAMARA will be able to appeal the NMCCA's decision to the CAAF unless you contact NAMARA and authorize an appellate attorney to represent you at that point. For more information on appellate defense counsel visit http://www.jag.navy.mil/organization/code_45.htm

- Civilian Appellate Defense Counsel. If you wish, you may hire a civilian attorney at no expense to the government to represent you throughout the post-trial and appellate processes.

Petition for New Trial

- a. At any time within three years after the date of the EOJ, you may petition for a new trial on the ground of newly discovered evidence or fraud on the court-martial pursuant to Article 73, UCMJ, and R.C.M. 1210.
- b. A petition for a new trial on the basis of fraud on the court-martial must demonstrate how the fraud had a substantial contributing effect on a finding of guilty or the sentence adjudged.
- c. A petition for a new trial on the ground of newly discovered evidence will only be granted if: (1) the evidence was discovered after the trial; (2) the evidence would not have been discovered by you or your defense counsel during your trial if you or your counsel exercised due diligence; and (3) the newly discovered evidence, if it had been considered by the trial court, in light of all other pertinent evidence, would probably produce a substantially more favorable result for you. You may not submit a petition for a new trial on the basis of newly discovered evidence if you pleaded guilty.

Post-Trial Processing and Notifications

- a. **Effective Date of Sentence.** Pursuant to Article 57(a) and R.C.M. 1102(b), forfeitures and reduction in rank, whether adjudged or automatic, take effect 14 days after the sentence is announced. Pursuant to Article 57(b) and R.C.M. 1103, you may request that the CA defer service of a sentence to confinement, forfeitures, or reduction in rank until the EOJ.
- b. **Automatic Forfeitures.** If the adjudged sentence includes either (1) confinement for more than six months or death, or (2) confinement for any period and a punitive discharge, Article 58b, UCMJ, requires the automatic imposition of forfeiture of all pay and allowances at a general court-martial or 2/3 pay at a special court-martial during the period of confinement. This applies regardless of whether the sentence is suspended. If you have dependents, pursuant to Article 58b(b), you

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may apply to the CA to waive automatic forfeitures, to be paid to your dependents for a period of up to six months. You must establish an allotment in order for your dependents to receive any waived pay and allowances. If you are held in confinement beyond your End of Active Obligated Service date, you or your dependents will not receive any pay or allowances by operation of law.

c. **Automatic Reduction in Pay Grade.** Automatic reduction to the lowest enlisted pay grade by operation of Article 58a, UCMJ, will be effected in the Naval service in the following manner:

- For any conviction for an offense committed before 1 January 2019, reduction to the lowest enlisted pay grade will be automatically effected only when the sentence as approved by the CA includes, whether or not suspended, either: (1) a dishonorable or bad-conduct discharge, or (2) confinement in excess of 90 days if the sentence is awarded in days, or in excess of 3 months if the sentence is awarded in months or years. This automatic reduction in rank goes into effect 14 days after the announcement of the sentence.
- Automatic reduction in pay grade is not authorized in any conviction for an offense committed on or after 1 January 2019 and before the President has delegated authority to the Secretary of the Navy to establish conditions for automatic reductions.
- For any conviction for an offense committed both on or after 1 January 2019 and after the President has delegated authority to the Secretary of the Navy to establish conditions for automatic reductions, reduction to the lowest enlisted pay grade will be automatically effected for any sentence that includes: (1) a dishonorable or bad-conduct discharge; or (2) confinement in excess of 90 days if the sentence is awarded in days, or in excess of 3 months if the sentence is awarded in months or years. This automatic reduction in rank goes into effect 14 days after the announcement of the sentence.

d. **Vacation of Suspended Sentences.** If you commit misconduct after the date of trial but before completing any period of suspension established by your plea agreement or the period of suspension recommended by the military judge or the trial counsel, or if you violate any of the conditions of suspension stated in your plea agreement during this time period, the CA may vacate any periods of suspension in accordance with R.C.M. 1108. If that occurs, any previously suspended portion of your sentence could be imposed upon you.

e. **Appellate Leave.** If your sentence includes an unsuspended punitive discharge, you may be placed on appellate leave in a no-pay status under the provisions of Article 76a, UCMJ, notwithstanding any provision regarding forfeitures or fines in any plea agreement. A service member placed in an appellate leave status will normally not receive any pay or allowances. Receipt of pay and/or

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allowances while in an appellate leave status will depend on the amount of accrued leave you have accumulated, request to use, and receive command approval to use, and on the sentence awarded by this court-martial. You will remain a member of the Armed Forces while in an appellate leave status and subject to military jurisdiction.

f. **Administrative Separation.** As a result of being found guilty, you may be processed for administrative discharge from the United States Navy or United States Marine Corps, as applicable. An administrative discharge could result in an Other-Than-Honorable characterization of service, unless otherwise limited in a plea agreement (as permitted by Service policy), even if part or all of the sentence, including a punitive discharge, is suspended for any reason.

Acknowledgment

By signing the document below, you acknowledge the following: (1) that prior to adjournment of your court-martial, you were provided with the above written advice; (2) that you have read and understand your post-trial and appellate rights; and (3) that you discussed your rights with your defense counsel prior to signing this form.

Attorney's Name
Rank
U.S. (Navy)(Marine Corps)
Detailed Defense Counsel

Accused's Name
Rank
U.S. (Navy)(Marine Corps)
Accused

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Initial below where you want all post-trial documents and copies of the record of trial sent.

I specifically request that my copy of the recording of the court-martial proceedings pursuant to R.C.M. 1106 be delivered to:

_____ me. _____ my counsel.

I specifically request that my copy of the victim(s) matters be delivered to:

_____ me. _____ my counsel. _____ Not Applicable.

I specifically request that my copy of the CA's Action be delivered to:

_____ me. _____ my counsel.

I specifically request that my copy of the Entry of Judgment be delivered to:

_____ me. _____ my counsel.

I specifically request that my copy of the certified record of trial be delivered to:

_____ me. _____ my counsel.

Contact information for the accused after the completion of the court-martial:

Name:

Address:

Phone: _____

Email:

Attorney's Name
Rank
U.S. (Navy)(Marine Corps)
Detailed Defense Counsel

Accused's Name
Rank
U.S. (Navy)(Marine Corps)
Accused