

APPELLATE AND POST-TRIAL RIGHTS AND POST TRIAL ADMINISTRATIVE PROCESSING

You are advised that your defense counsel (DC) is required by law to fully explain to you the following post-trial and appellate rights, and, that you have the right to request the military judge explain all or any portion of your appellate rights in open court prior to adjournment of your court-martial.

Record of Trial (ROT)

A copy of the ROT will be prepared and given to you or you may request that your copy of the ROT be delivered to your DC.

Staff Judge Advocate or Legal Officer's Recommendation (SJAR)

If you received a punitive discharge or were sentenced by a general court-martial, the convening authority (CA)'s staff judge advocate or legal advisor will submit an SJAR to the CA. Before forwarding the SJAR and the ROT to the CA, this legal advisor will serve a copy of the SJAR upon your DC. A separate copy will be served on you. If it is impracticable to serve the SJAR on you for reasons including, but not limited to, your transfer to a distant place, your unauthorized absence, or military exigency, your copy will be forwarded to your DC. You may also request on the record at this court-martial or in writing that your copy be sent to your DC instead of yourself.

Submission of Matters to the Convening Authority

You have a right to submit matters to the CA before that officer takes action on your case. In this regard, you have the right to request deferment of any sentence to confinement. These matters must be submitted within 10 days after a copy of the authenticated ROT or, if applicable, the SJAR, is served on you or your DC, whichever is later. The CA may extend these periods, for good cause, for not more than an additional 20 days. Failure to submit matters within the time prescribed waives the right to submit matters later. If new matters are raised by the victim after your submission of matters, you will be given an additional 10 days to submit comments on those new matters.

Action by the Convening Authority

The CA will take action on the sentence adjudged and may, in his discretion, take action on findings of guilty within the limits of Article 60, Uniform Code of Military Justice (UCMJ). The action to be taken on the findings and sentence may be limited by Article 60, UCMJ depending on the date of the offense, type of offense, maximum punishment of the offense, recommendation of the trial counsel, existence of a pretrial agreement, and the punishment awarded. If the CA is authorized by law to disapprove, commute, or suspend the sentence in whole or 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 and is a matter of command prerogative. The CA is not required to review the case for legal errors or factual sufficiency. **The CA may never increase the severity of the sentence and is not empowered to reverse a finding of not guilty.**

Review

If you were tried by a special court-martial and your sentence, as finally approved by the CA, does not include a punitive discharge, your case will be reviewed under the direction of the staff judge advocate for the CA's superior general court-martial convening authority (GCMCA). You may suggest, in writing, possible legal errors for the judge advocate to consider and that judge advocate must file a written response to legal errors noted by you. After such review, and completion of any required action by the GCMCA, you may request the Judge Advocate General of the Navy (JAG) to take corrective action. Such a request must be filed within two years of the CA's action, unless the time is extended for good cause.

If you were tried by a general court-martial and your sentence, as finally approved by the CA, does not include a punitive discharge or at least one year's confinement, your case will be forwarded to JAG. You may suggest in

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writing, possible legal errors or other matters for consideration by JAG. The ROT may be examined for any legal errors and for appropriateness of the sentence and JAG may take corrective action, if appropriate.

If your sentence, as finally approved by the CA, includes a punitive discharge (regardless of the type of court-martial), a year or more of confinement, or death, your case will be reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for legal errors, factual sufficiency, and appropriateness of sentence. This review is automatic. Following this, your case could be reviewed by the United States Court of Appeals for the Armed Forces (CAAF), and finally it might be reviewed by the Supreme Court of the United States.

Waiver of Review

You may waive appellate review, giving up the foregoing rights, or you may withdraw your case from appellate review at a later time. Once you file a waiver of withdrawal, your decision is final and appellate review is barred. If you waive or withdraw appellate review, your case will be reviewed by a judge advocate for certain legal errors. You may submit, in writing, suggestions of legal errors for consideration by the judge advocate, who must file a written response to each. The judge advocate's review will be sent to the GCMCA for final action. Within two years after such final action, you may request JAG take corrective action in your case. The two year period may be extended for good cause. You have the right to the advice and assistance of counsel in exercising or deciding to waive your post-trial and appellate rights.

Right to Counsel

It is your DC's responsibility to represent you during the CA's action stage of your court-martial conviction. Your DC is responsible for examining the ROT for error and, where applicable, the SJAR for errors or omissions. It is your DC's obligation to advise and assist you in preparing matters for submission to the CA for consideration prior to action being taken on the ROT.

If your case is reviewed by NMCCA, military counsel will be appointed to represent you at no cost to you and, if you choose, you may engage a civilian counsel at no expense to the United States. If your case should be reviewed by CAAF or by the Supreme Court of the United States, you would continue to have the same appellate counsel rights before these courts.

Post-Trial Processing and Notifications

I understand that as a result of being found guilty, I may be processed for administrative discharge from the United States Navy/Marine Corps. I understand that such an administrative discharge could result in an other-than honorable characterization of service, unless otherwise limited in a pretrial agreement (as permitted by Service policy), even if part or all of the sentence, including a punitive discharge, is suspended or disapproved for any reason.

I understand that if the approved sentence includes a punitive discharge or confinement in excess of 90 days, whether the sentence is suspended or not, Article 58a of the UCMJ and § 0152 of the Manual of the Judge Advocate General (JAGMAN) require that I suffer automatic administrative reduction in paygrade to the lowest enlisted paygrade, E-1, unless the CA takes action to remit or suspend the automatic reduction.

I understand that if the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, whether the sentence is suspended or not, then Article 58b of the UCMJ requires the automatic imposition of forfeiture of all pay and allowances at a general court-martial or 213 pay per month at a special court-martial during any period of confinement served, unless the CA takes action to waive or to defer the automatic forfeiture provision.

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I understand that forfeitures, whether adjudged or automatic, take effect upon the CA 's action in this case or 14 days after sentence is adjudged, whichever is earlier. I understand that I may request in writing that the CA defer execution of forfeiture until the CA takes action in this case. I also understand that I may request that the CA waive automatic forfeiture for a period up to six (6) months from the date of the CA 's action. Finally, I understand that if I am held in confinement beyond my End of Active Obligated Service (EASIEAOS) date, then I will not receive any pay or allowances by operation of law, regardless of the terms of this agreement.

I understand that if I commit misconduct after the date of trial, but before the date of the CA's action, the CA may, after first complying with notice and hearing requirements consistent with Article 72 of the UCMJ and Rules for Courts-Martial (R.C.M.) 1109, withdraw from the sentence limitation provisions of this agreement. Should the CA withdraw from the sentence limitation provisions of this agreement based on misconduct occurring after the date of trial but before action is taken in my case, I understand that any provisions in the pretrial agreement relating to suspension of any aspect of my sentence would become null and void in all respects and that the entire sentence adjudged at my court-martial could be approved and imposed upon me.

I also understand that if I commit any misconduct after the date of the CA 's action but before I have completed serving the entire sentence (including any period of suspension or probation) as finally approved and executed, the CA may, after complying with the procedures set forth in R.C.M. 1109, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the CA, and that previously suspended portion of my sentence could be imposed upon me.

I understand that I may be placed on appellate leave in a no-pay status under the provisions of Article 76a of the UCMJ, notwithstanding any provision regarding forfeitures or fines in any pretrial agreement, if the sentence as approved includes an unsuspended punitive discharge. I understand that a service member placed in an appellate leave status will normally not receive any pay or allowances. I further understand that receipt of pay and/or allowances while in an appellate leave status will depend on the amount of accrued leave I have accumulated and choose to use, and on the sentence awarded by this court-martial.

Acknowledgment

I acknowledge (1) that prior to adjournment of my court-martial, I was provided with the above written advice; (2) that I have read and I understand my post-trial and appellate rights; (3) that I discussed my rights with my DC prior to signing this form; and (4) that the military judge will discuss my appellate rights with me on the record prior to adjournment of the court, if I so desire.

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

_____ me. _____ my counsel.

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

_____ me. _____ my counsel.
