

# **Professional Development Standards (PDS) Military Justice**

Name: \_\_\_\_\_

### **Definition of Flexible Measurement Terms**

Note: Where verbs express only the general level of learning for knowledge and understanding, this is intended to provide greater flexibility for measurement in observable ways. When determining achievement of learning, use the appropriate observable action for the assessment.

I. Know: The ability to retrieve information from memory.

Actions used to assess knowing include: recall, list, state, identify, reproduce, and recognize.

II. Understand or Comprehend: Connecting existing with new information and experience to form meaning and relate concepts to other situations.

Actions used to assess understanding include: explain, summarize, defend, generalize, give examples, give analogies, and paraphrase.

III. Review: Reading and examining a reference sufficient to grasp its meaning and the principle issue(s).

Actions used to assess a sufficient review include: explain, summarize, discuss, and generalize.

**Core Competencies**

- 1. Preliminaries**
- 2. Events to Watch**
- 3. Ethical Obligations and Considerations**
- 4. Court Rules and Officer of the Court**
- 5. Sexual Offenses and VWAP Training**
- 6. Non-Punitive Measures**
- 7. Complaints and Inquiries**
- 8. Non-Judicial Punishment**
- 9. ADSEPS**
- 10. Pre-Trial/Case Screening**
- 11. Witness Interviews**
- 12. Speedy Trial**
- 13. Discovery**
- 14. Article 32 Preliminary Hearings**
- 15. Arraignment**
- 16. Motions and Objections**
- 17. Pre-Trial/Plea Agreements**
- 18. Stipulations**
- 19. Trial Preparation: Evidence and Witnesses**

**20. Members' Case****21. Sentencing Case****22. Post-Trial Duties and Administrative Actions**

**Commanding Officers have the discretion to modify or waive any line items or sections as appropriate for local practice. Commands are encouraged to simulate events that are not available locally to the extent practicable. Commanding Officers also have the discretion to determine that items completed in one PDS satisfy the requirements of a PDS in a subsequent rotation.**

**1. Preliminaries**

**Review, sign, and date:**

Appendix 23 (Analysis of Punitive Articles) of the Manual for Courts-Martial	NJS
NMCCA Website	
CAAF Website (Digest in particular)	
<u>Military Judges' Electronic Benchbook</u>	NJS
Army Criminal Law Deskbook	
Local Court Rules	
Navy-Marine Corps Trial Judiciary Uniform Rules of Court	
CNLSCINST 1300.1 [series] (Professional Development and Training Policy for Judge Advocates in Their Initial Tour, particularly, section on Trial and Defense services)	
CNLSCINST 5800.1[series], Naval Legal Service Command (NLSC) Manual, Chapters 10 & Appendices A-1, B-1, C1; Table of Contents	
<b>TC Only:</b> CNLSCINST 5800.1[series], Naval Legal Service Command (NLSC) Manual, Chapters 14, 15	

<b>DC Only:</b> CNLSCINST 5800.1[series], Naval Legal Service Command (NLSC) Manual, Chapters 11, 12	
<b>DC Only:</b> DCAP Deskbook and Standard Forms	

**Initial and Date:**

1. \_\_\_\_\_ ACCESS: Lexis.com user account name and password from your command POC.
2. \_\_\_\_\_ ACCESS/REVIEW: DCAP/TCAP SharePoint site and establish access using the instructions provided by your STC/SDC. Become familiar with its organization. Set alerts for discussions and other items. Learn their different missions/roles in assisting you as TC/DC.
3. \_\_\_\_\_ REVIEW: Standard Navy Distribution List, OPNAVINST 5400.45. (<https://www.secnave.navy.mil/doni/sndl.aspx>)
4. \_\_\_\_\_ ACCESS: Obtain access to Judicial Circuit's SharePoint site.
5. \_\_\_\_\_ DISCUSS: The Judge Advocate in their initial tour Business Rules as they pertain to your Trial or Defense practice.
6. \_\_\_\_\_ DISCUSS: The function of OJAG Codes 20, 30, 45, and 46. Visit their SharePoint pages as applicable.

**TC Only:**

1. \_\_\_\_\_ REVIEW: TCAP Trial Counsel Manual and motions bank, located on TCAP SharePoint site.
2. \_\_\_\_\_ OBTAIN/ACCESS: Wolverine account access. Discuss Wolverine operation and office policies with STC or designee.

**DC Only:**

1. \_\_\_\_\_ LEARN: How requests for counsel are sent to the DSO and how cases are detailed by your DSO.
2. \_\_\_\_\_ ACCESS: CMTIS with the help of your local CMTIS Administrator. Review the CMTIS Business Rules.

3. \_\_\_\_\_ REVIEW: Defense Counsel Deskbook, Senior Officer Representation Deskbook, Motions Template Bank, Discussion Board, and Navy Defender Newsletter located on the DCAP SharePoint site.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

## **2. Events to Watch**

**Note: Personnel are strongly encouraged to observe as many sessions of court as possible as you will learn from each counsel, Military Judge, and witness you observe in court.**

**OBSERVATION is preferred, but not required. If no opportunity to OBSERVE, discuss line item with appropriate department personnel.**

**Initial and Date:**

1. \_\_\_\_\_ OBSERVE: An Article 32 hearing.
2. \_\_\_\_\_ OBSERVE: A docketing session.
3. \_\_\_\_\_ OBSERVE: An arraignment.
4. \_\_\_\_\_ OBSERVE: A motions hearing.
5. \_\_\_\_\_ OBSERVE: A guilty plea with a Pre-trial Agreement (PTA) or Plea Agreement.
6. \_\_\_\_\_ OBSERVE: A contested court-martial with members.
7. \_\_\_\_\_ OBSERVE: Voir dire.
8. \_\_\_\_\_ OBSERVE: An expert witness testifying.
9. \_\_\_\_\_ OBSERVE: A victim testifying.
10. \_\_\_\_\_ OBSERVE: A remote witness testifying via VTC or telephone.
11. \_\_\_\_\_ OBSERVE: An R.C.M. 802 conference.
12. \_\_\_\_\_ OBSERVE: An IRO Hearing.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_

### **3. Ethical Obligations & Considerations**

**Note:** Complaints against the ethical practices of another attorney are very serious matters. As a result, they should not be taken lightly. Any discussion of alleged violations of ethical rules should be discussed thoroughly with your chain of command, and only after approval, be pled in a court filing.

**Review, sign, and date:**

JAG Corps Rules of Professional Responsibility JAGINST 5803.1E	NJS
Your state rules of professional responsibility.	

**Initial & Date:**

1. \_\_\_\_\_ EXPLAIN: The rules of professional responsibility applicable when there are reasonable grounds to believe that a client is at imminent risk of self-harm.
2. \_\_\_\_\_ EXPLAIN: How the JAG Corps Rules of Professional Responsibility apply to the following ethical duties:
  - a. Formation of the attorney-client relationship;
  - b. Communications with a represented party;
  - c. Conflicts of interest;
  - d. Duty of loyalty;
  - e. Duty of candor toward the tribunal;
  - f. Fairness to opposing counsel;
  - g. Special responsibilities of trial counsel and government counsel;
  - h. Conflicts associated with representing clients;
  - i. Duty of competence;
  - j. Duty to communicate;
  - k. Duty of diligence;
3. \_\_\_\_\_ DISCUSS: Best practices for avoiding ethical violations and for addressing potential ethical violation.
4. \_\_\_\_\_ EXPLAIN: The rules of professional responsibility applicable to attorney client privileges and the best practices to ensure maintaining the client's confidences.
5. \_\_\_\_\_ EXPLAIN: The rules of professional responsibility applicable to attorney work-product and the best practices for avoiding a breach to the privilege.
6. \_\_\_\_\_ EXPLAIN: The rules of professional responsibility related to "attorney as witness."



7. \_\_\_\_\_ REVIEW: OJAG Code 13's SharePoint site, specifically, training materials related to professional responsibility.
8. \_\_\_\_\_ EXPLAIN: Where to go for interpretation or guidance on the application of the Rules.
9. \_\_\_\_\_ EXPLAIN: The steps to take (and not to take) if you believe a fellow counsel has violated the Rules.
10. \_\_\_\_\_ EXPLAIN: Your responsibility if you believe an opposing counsel has violated the Rules.
11. \_\_\_\_\_ EXPLAIN: Under what circumstances a judge advocate may make an "extra-tribunal" statement.
12. \_\_\_\_\_ EXPLAIN: How the rules of professional responsibility pertain to non-attorneys, such as Legalmen, paralegals, civilian interns, and other support personnel.
13. \_\_\_\_\_ EXPLAIN: Your responsibilities with regard to non-attorney assistants.
14. \_\_\_\_\_ EXPLAIN: The procedure if you believe there is an actual or apparent conflict between your State Bar professional rules and the JAG Corps professional responsibility rules.
15. \_\_\_\_\_ CREATE: Your conflict-logbook for your Trial or Defense rotation. Discuss the logbook with STC or SDC, depending on your rotation, to ensure it meets departmental and JAG Corps requirements. Maintain logbook at all times and be prepared for spot-checks.

**DC Only:**

1. \_\_\_\_\_ REVIEW: Your command's policy/standard operating procedure on potentially suicidal clients.
2. \_\_\_\_\_ REVIEW: Your command's policies governing detail of counsel, eligibility for defense services, and use of Defense Litigation Support Specialists (DLSS) resources.
3. \_\_\_\_\_ REVIEW: Your State Bar rules regarding forming an attorney client relationship. If your state rules conflict with JAGINST 5803.1, report it immediately to your SDC.

RECOMMENDED \_\_\_\_\_

(PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_

#### **4. Court Rules and Officer of the Court**

**Review, sign, and date:**

NMCTJINST 5810.5[series]	
JAG/CNLSCINST 5530.2 [series]	
Local Courtroom Security Policy and Procedures	

**Initial and Date:**

1. \_\_\_\_\_ DEMONSTRATE: Familiarity with the Military Judges' Benchbook, familiarity with the local Rules of Court, an understanding of the docketing rules in effect in the circuit, and an understanding of the rules governing conduct of spectators in the courtroom.
2. \_\_\_\_\_ DRAFT: A Trial Management Order (TMO).
3. \_\_\_\_\_ REVIEW: A Security Risk Assessment Form (SRAF).

**TC Only:**

1. \_\_\_\_\_ SUBMIT: A completed docketing request to include a request for a court-martial date and arraignment.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/Department Head)

#### **5. Sexual Offenses and VWAP Training**

**Review, sign, and date:**

Articles 120 and 125, UCMJ (all versions)	NJS
JAGINST 5810.3[series] Navy Victim Legal Counsel Program Manual	NJS
ALNAV 061/15 Requirement to Consider A Victim's Preference for Prosecution by Court Martial or Civilian Court	NJS
M.R.E. 412, 413, 414, 513, 514, 611, and 615	
DoDD 6495.01 and DoDI 6495.02	
OPNAVINST 1752.1[series] and SECNAVINST 1752.4[series]	
34 U.S.C. § 20141; 18 U.S.C. §§ 2250 et seq.; DoDD 1030.01 and DoDI 1030.02	
Adam Walsh Act; 34 U.S.C. §§ 20901 et seq., including §§ 20913, 20920	

**Initial and Date:**

## 1. NJS KNOW:

- a. Difference between "sexual act" and "sexual contact";
- b. How allegations committed before 1 October 2007 are handled;
- c. How allegations between 1 October 2007 and 27 June 2012 are handled;
- d. How allegations between 28 June 2012 and 1 January 2019 are handled;
- e. How allegations after 1 January 19 are handled;
- f. How consent and mistake of fact as to consent applies to allegations under the various versions of Article 120;
- g. Discuss what it means to be capable of consenting under MJA16.
- h. Discuss *United States v. Pease*, 75 M.J. 180 (C.A.A.F. 2016) and its effect on consent in alcohol related cases.

## 2. NJS KNOW:

- a. Exceptions to M.R.E. 412;
- b. Notice and motion filing requirements under M.R.E. 412;
- c. Required process for a closed hearing under M.R.E. 412;

## 3. NJS KNOW:

- a. Differences between Restricted Reporting and Unrestricted Reporting;
- b. To whom a Restricted Report may be made;
- c. Limitations on confidentiality of a Restricted Report;

- d. What use a command, investigative agency, or counsel may make of a restricted report;
- e. Difference between a SARC and VA

4. NJS DISCUSS:

- a. The Victim-Advocate privilege under M.R.E. 514 and its exceptions.
- b. The Psychotherapist-Patient privilege under M.R.E 513 and its exceptions.

**Note:** Personnel should complete the sections below in a manner that ensures that you will not be called as a witness in a case. Only civilian paralegals or Legalmen may be used as “seconds” during interviews in accordance with CNLSCINST 1300.1 [series].

**OBSERVATION is preferred, but not required. If no opportunity to OBSERVE, discuss line item with appropriate department personnel.**

5. \_\_\_\_\_ INTERVIEWS:

- a. OBSERVE: An interview or direct/cross examination of a Sexual Assault Nurse Examiner (SANE)/Sexual Assault Forensic Examiner (SAFE); \_\_\_\_\_
- b. DISCUSS: How a SAFE is conducted and time windows for the collection of evidence.
- c. DISCUSS: The results of a SAFE collection kit and how to introduce medical evidence into evidence at a court-martial;
- d. DISCUSS: Lab results that might be present in a sexual assault case;
- e. OBSERVE: Consultation with an expert witness regarding the likely testimony of an opposing expert witness; \_\_\_\_\_
- f. DISCUSS: Memory impairment resulting from alcohol consumption in an alcohol facilitated sexual assault and how to address memory issues at trial;
- g. EXPLAIN: Situations in which alternative (non-live) testimony of a witness may be desired by a party, and methods/options for alternative testimony \_\_\_\_\_.

6. \_\_\_\_\_ DISCUSS: How allegations committed before 1 October 2007 are handled.

7. \_\_\_\_\_ DISCUSS: How allegations committed between 1 October 2007 and 27 June 2012 are handled.

8. \_\_\_\_\_ DISCUSS: How allegations committed between 28 June 2012 and 1 January 2019 are handled.

**TC Only:**

- 1. \_\_\_\_\_ LEARN: About your duties under VWAP, role of TC, VWLO, VWAC, and requirements. Read OPNAVINST 5800.7A and COMNAVLEGSVCCOM INSTRUCTION 5800.4A.

2. \_\_\_\_\_ REVIEW: Victim preference letter regarding jurisdictional preference.
3. \_\_\_\_\_ OBSERVE: An interview of the alleged victim in a sexual assault case.
4. \_\_\_\_\_ OBSERVE: TC contact a witness and an alleged victim to give a status update and conduct an interview.
5. \_\_\_\_\_ IDENTIFY: The state office for Crime Victim Compensation and discuss transitional compensation in the federal government.
6. \_\_\_\_\_ REVIEW: DD Form 2701.
7. \_\_\_\_\_ OBSERVE: TC provide an alleged victim a completed DD Form 2702 and explain the contents.
8. \_\_\_\_\_ OBSERVE: TC provide an alleged victim a completed DD Form 2703 and explain the contents.
9. \_\_\_\_\_ EXPLAIN: DD Form 2704 to an alleged victim or witness and determine their election to be notified.
10. \_\_\_\_\_ USE: The OJAG Victim Declination Letter and explain its use to an alleged victim.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/Department Head)

DATE \_\_\_\_\_

## **6. Non-Punitive Measures (Administrative Remedies)**

**Review, sign, and date:**

JAGMAN, Chapter 1, § 0105	
R.C.M. 306(c)(2)	
JAGINST 5800.7(series) (JAGMAN), Chapter 1, § 0102	
MILPERSMAN 1611-010	
MILPERSMAN 1611-020	
MILPERSMAN 1450-010	
MILPERSMAN 1070-170	
MILPERSMAN 1616-010	
MILPERSMAN 1616-030	
MILPERSMAN 1616-040	
MILPERSMAN 5812-010	
MILPERSMAN 1430-020	
MILPERSMAN 1160-020	

**Initial and Date:**

1. NJS UNDERSTAND: The limits on Extra Military Instruction (EMI).
2. NJS KNOW: Who may assign EMI.
3. NJS DISCUSS: The reporting requirements when a decision is made to impose NJP on an officer and when NJP is complete.

**DC Only:**

1. \_\_\_\_\_ REVIEW: A Page 13 issued to one of your PERSREP clients.
2. \_\_\_\_\_ REVIEW: An EMI Order for compliance with Navy Regulations.

3. \_\_\_\_\_ ADVISE: A PERSREP client regarding a Non-Punitive Letter of Caution (NPLOC). Discuss the implications of receiving one.
4. \_\_\_\_\_ ADVISE: A PERSREP client regarding a Letter of Instruction (LOI). Discuss the implications of receiving one.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_

**7. Complaints/Inquiries****Review, sign, and date:**

Article 138, UCMJ	
Article 1150, U.S. Navy Regulations (1990)	
JAGMAN, Chapter 3	
SECNAVINST 5370.5(series), "Department of the Navy Hotline Program"	
SECNAVINST 5370.7(series), "Military Whistleblower Reprisal Protection"	
DOD Directive 7050.06, "Military Whistleblower Protection"	

**Initial and Date:**

1. \_\_\_\_\_ KNOW: The difference between an Article 138 and 1150 complaint.
2. \_\_\_\_\_ DESCRIBE: Administrative differences between Article 138 and Article 1150 complaints.

**DC Only:**

1. \_\_\_\_\_ REVIEW: Article 138 complaint (or an associated request for redress) drafted by a PERSREP client. Discuss the possible outcomes of that complaint.
2. \_\_\_\_\_ REVIEW: Article 1150 complaint drafted by a PERSREP client. Discuss the possible outcomes of that complaint.
3. \_\_\_\_\_ DISCUSS: With a PERSREP client how to make an IG complaint and the possible outcomes of that complaint.
4. \_\_\_\_\_ DISCUSS: With a PERSREP client the concept of reprisal and the options a client has if the client is subject of reprisal or feels unsafe after making an IG or other official complaint.
5. \_\_\_\_\_ DISCUSS: With a PERSREP client how to make a Congressional Complaint and the possible outcomes of that complaint.

RECOMMENDED \_\_\_\_\_  
 (PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_



## 8. Non-Judicial Punishment

**Review, sign, and date:**

ARTICLE 15, UCMJ	
PART V, MCM	
JAGMAN, Chapter 1 (Sections 0106-0119)	
JAGMAN, Chapter 1 (Section 0124)	
MILPERSMAN 1611-010	
MILPERSMAN 1626-020	
MILPERSMAN 1626-030	
MILPERSMAN 5812-010	
NAVADMIN 373/11	

**Initial and Date:**

1. NJS DESCRIBE: Who has NJP authority and the limitations, if any, on their authority.
2. NJS KNOW: The requirements for self-reporting arrests and convictions and the restrictions on the use of a self-report for disciplinary purposes.
3. \_\_\_\_\_ EXPLAIN: The effect state court adjudications have on the ability of a command to administer NJP for the same acts.
4. \_\_\_\_\_ EXPLAIN: How prior NJPs can be used at subsequent courts-martial, both for same offenses and for different offenses.
5. \_\_\_\_\_ EXPLAIN: *Booker* rights and what is necessary to admit an NJP into evidence during sentencing at a court-martial.

**DC Only:**

1. \_\_\_\_\_ DESCRIBE: To a PERSREP client how NJP is conducted, generally.
2. \_\_\_\_\_ EXPLAIN: To a PERSREP client their rights at NJP, *Booker* rights, and the standard of proof at NJP.
3. \_\_\_\_\_ EXPLAIN: To a PERSREP client lawful punishments and limitations at NJP.
4. \_\_\_\_\_ EXPLAIN: To a PERSREP client the NJP appeal grounds and process.
5. \_\_\_\_\_ REVIEW: NJP appeal drafted by a PERSREP client.
6. \_\_\_\_\_ EXPLAIN: To a PERSREP client the process and criteria for a NJP Set Aside.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

## 9. Enlisted Administrative Separations

**Review, sign, and date:**

MILPERSMAN 1910-100	NJS
DoD Instruction 1332.14 (Enlisted Administrative Separations)	NJS
MILPERSMAN 1910-233	NJS
MILPERSMAN 1910-210	NJS
MILPERSMAN 1910-212	NJS
MILPERSMAN 1910-302	NJS
MILPERSMAN 1910-402 through 410 and 414	NJS
MILPERSMAN 1910-500 through 518	NJS
MILPERSMAN 1910-600	NJS
MILPERSMAN 1910-700	NJS
MILPERSMAN 1910-702	NJS
MILPERSMAN 1910-704	NJS
MILPERSMAN 1910-106	NJS
MILPERSMAN 1910-140	NJS
MILPERSMAN 1910-142	NJS
MILPERSMAN 1910-144	NJS
MILPERSMAN 1910-146	NJS
MILPERSMAN 1910-152	NJS
10 USC § 1407 (Retirement Pay Determination)	
SECNAVINST 5300.28(series), Military Substance Abuse Prevention and Control	

OPNAVINST 5350.4 (series), Navy Alcohol and Drug Abuse Prevention and Control	
Navy Urinalysis Coordinators (UPC) Handbook	
MILPERSMAN 1600-100	
MILPERSMAN 1910-226	

**Initial and Date:**

1. \_\_\_\_\_ KNOW: The limitations on administratively separating a Sailor for conduct from a prior enlistment.
2. \_\_\_\_\_ EXPLAIN: The difference between Convening Authority and Separation Authority.
3. \_\_\_\_\_ EXPLAIN: Whether a Sailor can be subject to ADSEP proceedings past their End of Active Obligated Service (EAOS).

**DC Only:**

1. \_\_\_\_\_ EXPLAIN: The process of retirement grade determinations.
2. \_\_\_\_\_ COUNSEL: The Respondent about rights concerning ADSEP. In an appropriate case, counsel a Respondent about rights to separation pay.
3. \_\_\_\_\_ COUNSEL: A Respondent regarding the distinction between ADSEP and court-martial.
4. \_\_\_\_\_ DESCRIBE: Mandatory v. discretionary processing to a client.
5. \_\_\_\_\_ COUNSEL: A Respondent regarding Notification v. Board Procedure.
6. \_\_\_\_\_ EXPLAIN: To the Respondent the available Characterizations of Service and their implications for VA benefits and civilian employment.
7. \_\_\_\_\_ EXPLAIN: To the Respondent Conditional Waivers and whether or not the waiver is available and/or appropriate in their case.
8. \_\_\_\_\_ EXPLAIN: To the Respondent the situations in which PERS may take action contrary to the Board's recommendations.
9. \_\_\_\_\_ DRAFT: A letter of deficiency (LOD)

10. \_\_\_\_\_ DISCUSS: With the Respondent the Discharge Review Board and Board of Corrections for Naval Records procedures and the likelihood of getting his/her discharge upgraded.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_

## 10. Pre-Trial/Case Screening

**Review, sign, and date:**

JAGINST 5803.1 [series]	NJS
Article 25, UCMJ	NJS
R.C.M. 304, 305	NJS
U.S. Army JAG School Criminal Law Deskbook – Pleas	
MILPERSMAN 1910-208	

**Initial and Date:**

1. NJS CALCULATE: An accused's period of pre-trial restraint, as applicable.
2. NJS EXPLAIN: The rules regarding pre-trial restraint pursuant to R.C.M. 304 and 305.
3. NJS UNDERSTAND: How this may impact pre-trial negotiations and the court-martial process.
4. NJS PREPARE: A proof matrix which analyzes all supported charges and specifications.
5. NJS REVIEW: A convening order and explain its requirements. Review Article 25(d)(2), UCMJ for qualifications.
6. NJS IDENTIFY: The steps required in the preferral process.
7. NJS IDENTIFY: The steps required in the referral process.

**TC Only:**

1. NJS READ: A Report of Investigation (ROI) and identify areas for further investigation. Specifically execute the following steps and initial upon completion:
  - a. Ensure all exhibits are present. \_\_\_\_\_
  - b. Contact the RA to ensure that nothing is missing. \_\_\_\_\_
  - c. Secure all interview discs/Cellebrite reports/etc. mentioned in ROI. \_\_\_\_\_
  - d. Assess whether the investigation is closed or ongoing (determine whether a request to NCIS to conduct further investigation, should be explored). \_\_\_\_\_

2. NJS From a given set of charges and specifications:
  - a. IDENTIFY: Any drafting/pleading errors contained in the sample.
  - b. DISTINGUISH: Between fatal (material) and non-fatal (immaterial) defects in specifications. Give an example.
  - c. DISTINGUISH: Between fatal (material) and non-fatal (immaterial) variance in specifications. Give an example.
3. NJS DRAFT: A complete charge sheet, including all appropriate charges and specifications. Use the elements and instructions in the Military Judges' Benchbook. Consult the relevant chapter(s) of the U.S. Army JAG School Criminal Law Deskbook Volume II – Crimes and Defenses.
4. NJS IDENTIFY: The purpose of block 13, receipt by summary court-martial officer.
5. NJS IDENTIFY: The remedies available and the applicable deadlines for correction of pleading defects.
6. NJS SCREEN: A completed DD Form 458 Charge Sheet (all blocks) utilizing the checklist provided by your Senior Trial Counsel.
7. \_\_\_\_\_ CONDUCT: Pre-screening of a case using TCAP Case Screening Guidelines – identify possible charges, think about charging theories, forum, CA goals, potential costs and proposed dispositions of a case – prepare to brief the CA on case.
8. \_\_\_\_\_ EXPLAIN: How to involuntarily extend an accused past his or her EAOS using a “Legal Hold” and how this may impact the administrative separation process and pre-trial negotiations.
9. \_\_\_\_\_ ADMINISTER: The oath to an accuser qualified to prefer charges.
10. \_\_\_\_\_ UNDERSTAND: Procedures for release of information to Public Affairs Officers or to the media at various stages of process; Art. 32 hearing versus SPCM/GCM (post-referral).
11. \_\_\_\_\_ UNDERSTAND: Your Trial Shop's process for drafting Prosecution Merits Recommendations (PMRs) and how those recommendations are shared with convening authorities.
12. \_\_\_\_\_ DRAFT: A Prosecutorial Merit Memo (PMM) and PMR.

**DC Only:**

1. \_\_\_\_\_ KNOW: How counsel are detailed to cases within your DSO.
2. \_\_\_\_\_ UNDERSTAND: An accused's End of Active Obligated Service (EAOS) and how it can impact case strategy.
3. \_\_\_\_\_ EXPLAIN: How an accused can be involuntarily extended past his or her EAOS using a "Legal Hold" and how this may impact the administrative separation process and pre-trial negotiations.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/Department Head)

DATE \_\_\_\_\_



## **11. Witness Interviews**

### **Review, sign, and date**

Article 46, UCMJ	
JAGINST 5803.1[series]	
<b>DC Only:</b> DCAP Deskbook Chapter 6	

### **Initial and Date:**

1. \_\_\_\_\_ REVIEW: statement(s) of an alleged sexual assault victim with a core counsel.
2. \_\_\_\_\_ PREPARE: An outline for a witness interview of an alleged victim in a sexual assault case with TC/detailed Defense Counsel.
3. \_\_\_\_\_ OBSERVE: Preparing a client (DC) or alleged victim (TC) to testify in a contested case.
4. \_\_\_\_\_ PREPARE: An outline for a witness interview for an upcoming fact witness in a contested court-martial and discuss with TC/detailed Defense Counsel.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

**12. Speedy Trial****Review, sign, and date:**

R.C.M. 707	
Article 10, UCMJ	
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	
CAAF Opinion Digest – Right to Speedy Trial	

**Initial and Date:**

1. \_\_\_\_\_ DISCUSS: With STC/SDC:
  - a. Three types of speedy trial requirements (regulatory, statutory and constitutional); \_\_\_\_\_
  - b. 5th Amendment considerations with respect to Speedy Trial. \_\_\_\_\_
  - c. 6th Amendment considerations with respect to Speedy Trial \_\_\_\_\_
  - d. The legal standards for speedy trial under R.C.M. 707 and Article 10, UCMJ; \_\_\_\_\_
  - e. Identify speedy trial/re-sentencing requirements on a remanded case ; \_\_\_\_\_
  - f. Triggering events for each type of speedy trial requirement to include personal jurisdiction; \_\_\_\_\_
  - g. What stops, and what does not stop, the speedy trial clock; \_\_\_\_\_
  - h. Milestone events with regard to speedy trial; \_\_\_\_\_
  - i. “Excludable delay” and in what form it should be; \_\_\_\_\_
  - j. Discuss who can request excludable delay and for what; \_\_\_\_\_
  - k. Need for accurate accounting of speedy trial triggering events and excludable delays; \_\_\_\_\_
  - l. Identify whether a speedy trial motion under R.C.M. 707 or Article 10 can be waived. \_\_\_\_\_
  - m. Identify who needs to be notified regarding documentation with respect to Speedy Trial in a pre-trial confinement or restriction case; \_\_\_\_\_
2. \_\_\_\_\_ COMPLETE: A daily activity log on a case.
3. \_\_\_\_\_ DRAFT: An excludable delay request or endorsement.

 RECOMMENDED \_\_\_\_\_  
 (PDTO/Branch/Department Head)

DATE \_\_\_\_\_

**13. Discovery****Review, sign, and date:**

R.C.M. 701 and 703	NJS
M.R.E. 304(d), 312, 321, 403, 404(b), 413, 414, 507, 609(b), 612, 703, and 807	
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	
JAGINST 5813.1[series]	
<i>United States v. Henthorn</i> , 931 F.2d 29 (9th Cir. 1991)	
Jencks Act, 18 U.S.C. § 3500 and R.C.M 914	
<i>Jencks v. United States</i> , 353 U.S. 657 (1957)	
<i>United States v. Henthorn</i> , 931 F.2d 29 (9 <sup>th</sup> Cir. 1991)	
<i>United States v. Agurs</i> , 427 U.S. 97 (1976)	
<i>Weatherford v. Bursey</i> , 429 U.S. 545 (1977)	
<i>United States v. Lucas</i> , 5 M.J. 167 (C.M.A. 1978)	
<i>United States v. Garries</i> , 22 M.J. 288 (C.M.A. 1986), <i>cert. denied</i> , 479 U.S. 985 (1986)	
<i>United States v. Simmons</i> , 38 M.J. 376 (C.M.A. 1993)	
<i>United States v. Briggs</i> , 48 M.J. 143 (C.A.A.F. 1998)	
<i>Goldberg v. United States</i> , 425 U.S. 94 (1976)	
DoD Health Information Privacy Regulation (DoD 6025.18-R)	
<i>Giglio v. United States</i> , 405 U.S. 150 (1972)	

**Initial and Date:**

1. \_\_\_\_\_ DISCUSS: Pre-referral investigative tools.
2. \_\_\_\_\_ EXPLAIN: The standardized electronic discovery process used in your area of practice.

3. \_\_\_\_\_ EXPLAIN: The difference between discovery under R.C.M. 701 and production under R.C.M. 703.
4. \_\_\_\_\_ EXPLAIN: Which files the government must review to fulfill its *Brady* and *Giglio* obligations.
5. \_\_\_\_\_ EXPLAIN: Obligations under Jencks Act and R.C.M. 914.
6. \_\_\_\_\_ EXPLAIN: *Henthorn*, *Jencks* and *Giglio* requests and how that information may be obtained.
7. \_\_\_\_\_ EXPLAIN: The receipt of discovery procedures in your local circuit.
8. \_\_\_\_\_ EXPLAIN: How to handle evidence in a child pornography case. Review JAG/CNLSINST 5814.1D.

**TC Only:**

1. \_\_\_\_\_ DRAFT: A *Henthorn* request to an agency. Explain the differences between obtaining information from military law enforcement vice state law enforcement.
2. \_\_\_\_\_ RESPOND: To a Defense discovery request indicating what material has been provided to the Defense and what actions the Government has taken regarding any other requests.

**DC Only:**

1. \_\_\_\_\_ DRAFT: A discovery request.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/Department Head)

DATE \_\_\_\_\_

## **14. Article 32 Preliminary Hearings**

**Review, sign, and date:**

Articles 32 – 35 , 38, UCMJ	
R.C.M. 405 and Analysis of R.C.M. 405	

**Initial and Date:**

1. \_\_\_\_\_ EXPLAIN: How to secure an Article 32 preliminary hearing officer and what qualifications the preliminary hearing officer should possess.
2. \_\_\_\_\_ DISCUSS: GCMCA policy regarding conditional waivers, if any.
3. \_\_\_\_\_ EXPLAIN: Which M.R.E.s apply at an Article 32 hearing.
4. \_\_\_\_\_ EXPLAIN: The rules regarding alternatives to testimony at an Article 32 hearing.
5. \_\_\_\_\_ EXPLAIN: Witness availability issues for an Article 32 hearing and government's lack of authority to subpoena witnesses for an Article 32 hearing.
6. \_\_\_\_\_ EXPLAIN: The procedures for inviting a civilian witness to an Article 32 hearing.
7. \_\_\_\_\_ EXPLAIN: The procedures for inviting an alleged victim to an Article 32 hearing.
8. \_\_\_\_\_ EXPLAIN: The difference between a conditional and an unconditional waiver of an Article 32 hearing.

**TC Only:**

1. \_\_\_\_\_ PREPARE: Article 32 script.
2. \_\_\_\_\_ DRAFT: A Preliminary Hearing Officer (PHO) appointing letter.
3. \_\_\_\_\_ REVIEW: A PHO report and discuss with your STC.
4. \_\_\_\_\_ ASSIST: The accused's command in drafting an endorsement to the GCMCA.
5. \_\_\_\_\_ DEMONSTRATE: A working knowledge of the court reporting equipment to record the Article 32 proceedings.

**DC Only:**

1. \_\_\_\_\_ OBSERVE: Client advice on the pros and cons of proceeding to an Article 32 hearing or choosing to submit a waiver.
2. \_\_\_\_\_ PREPARE: Written objections and/or comments to an Article 32 hearing.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/Department Head)

## 15. Arraignment and Notices

**Review, sign, and date:**

Joint Trial Guide	
M.R.E. 103, 104, and 304	
R.C.M. 108, 308, 405, 602(discussion), 701(a), 702(e), 703(d), 706(a), 904, 910(f)(2), and 914	
M.R.E. 202, 301(c)(2), 302, 304, 311, 412, 505, 506, 507, 514, 613, and 902	
Article 37, UCMJ	
U.S. Army JAG School Criminal Law Deskbook - Motions	
U.S. Army JAG School Criminal Law Deskbook - Unlawful Command Influence	

**Initial and Date:**

1. NJS KNOW: What an arraignment is and why it is significant.
2. \_\_\_\_\_ KNOW: What information must be provided to the defense prior to arraignment.
3. \_\_\_\_\_ KNOW: The requirements in the Uniform Rules and local rules for motions, including form and filing deadlines.
4. \_\_\_\_\_ KNOW: What documents, cases, or other matters should be attached to all motions:
  - a. The evidentiary requirements for motions generally. Discuss the distinction between motions that raise only matters of law versus motions that raise matters of both fact and law. \_\_\_\_\_
  - b. Discuss a proffer and whether it constitutes evidence. \_\_\_\_\_
  - c. Demonstrate what evidence (witnesses, documents, etc.) is required to support your motion and your plan for getting that evidence admitted. \_\_\_\_\_
5. \_\_\_\_\_ OBSERVE: Core counsel prepare a witness for testimony during a motions hearing.
6. \_\_\_\_\_ EXPLAIN: A *Daubert* hearing and when it is used.

7. \_\_\_\_\_ EXPLAIN: The actions that may constitute unlawful command influence (UCI) and how UCI can impact a court-martial.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/Department Head)



## 16. Motions and Objections

**Review, sign, and date:**

Your local rules of Court, paying particular attention to the sections on motions practice.	
U.S. Army JAG School Criminal Law Deskbook - Motions	
R.C.M. 905, 906, and 907	
Article 39, UCMJ	

**Initial and Date:**

1. \_\_\_\_\_ REVIEW: The Notice obligations under:
  - a. R.C.M. 701 (a)(4)
  - b. R.C.M. 701(b); \_\_\_\_\_
  - c. R.C.M. 703(d)
  - d. R.C.M. 903(c)(1) \_\_\_\_\_
2. \_\_\_\_\_ DRAFT:
  - a. A motion for review by the SDC/STC; \_\_\_\_\_
  - b. Proposed findings of fact and conclusion of law for the motion for review by the SDC/STC. \_\_\_\_\_
3. \_\_\_\_\_ LIST: The issues that *must* be raised by defense counsel before entering a plea, R.C.M. 905(b).
4. \_\_\_\_\_ DESCRIBE: What defense counsel must do to preserve issues with a conditional plea, how conditional pleas are different than non-conditional pleas, who must accept them, and what issues are proper for conditional pleas.
5. \_\_\_\_\_ LIST: The non-waivable motions or objections.
6. \_\_\_\_\_ MOTIONS *in limine*:
  - a. Explain the significance of a motion *in limine*; \_\_\_\_\_
  - b. Provide two (2) examples of issues that would be appropriate for motions *in limine*.
  - c. Discuss when motions *in limine* can be filed; \_\_\_\_\_
7. \_\_\_\_\_ KNOW: The effect that a tentative ruling or the military judge's failure to rule on a motion (*in limine* or otherwise) or objection has on whether the issue is preserved.

8. \_\_\_\_\_ KNOW: What an objection must contain – at a minimum – to properly preserve an issue. Note: some motions and objections must contain more, depending on the issue.
9. \_\_\_\_\_ KNOW: How to preserve a challenge for cause, R.C.M. 912(f)(4).
10. \_\_\_\_\_ KNOW: How to preserve a *Batson* challenge.
11. \_\_\_\_\_ KNOW: How to preserve issues that arise during an 802 conference.
12. \_\_\_\_\_ KNOW: How a tactical decision by the DC may waive an issue that was properly raised. Give an example of a strategic reason not to raise a proper objection.
13. \_\_\_\_\_ KNOW: How to preserve an issue relating to an Article 32 investigation.
14. \_\_\_\_\_ REVIEW: Procedures to request a Government appeal under R.C.M. 908 including points of contact at Navy TCAP and Code 46.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/Department Head)

DATE \_\_\_\_\_

## 17. Pre-Trial/Plea Agreements

**Review, sign, and date:**

Article 58 and 76, UCMJ	
R.C.M. 811	
MILITARY EVIDENTIARY FOUNDATIONS §12-2	NJS
JAGMAN Section 0152	
R.C.M. 1109	
<i>United States v. Bertelson</i> , 3 M.J. 314 (C.M.A. 1977)	
THE LAUTENBERG AMENDMENT, 18 U.S.C. § 921-22 AND DEPARTMENT OF DEFENSE FORM (DD) 2760.	
Military Judges' Benchbook 2-2-6	
U.S. Army JAG School Criminal Law Deskbook – Pleas and Plea Agreements	

**Initial and Date:**

1. NJS \_\_\_\_\_ CONDUCT: Plea Agreement negotiations with the assigned trial/defense counsel on a case on which you are assisting.
2. NJS \_\_\_\_\_ DRAFT: A stipulation of fact, using the Military Judges' Benchbook and the MCM that addresses all elements of Articles to which you are entering into a Stipulation of Fact.
3. NJS \_\_\_\_\_ OBSERVE: The use of a Stipulation of Fact at trial.
4. NJS \_\_\_\_\_ DISCUSS: Segmented sentencing and negotiating a sentencing range.
5. \_\_\_\_\_ DISCUSS:
  - a. Process of negotiating a plea agreement; \_\_\_\_\_
  - b. Jurisdictional sentencing limits of SCM, SPCM, and GCM; \_\_\_\_\_
  - c. Terms and provisions which must be included in a written plea agreement; \_\_\_\_\_
  - d. Terms and conditions which are prohibited in a plea agreement; \_\_\_\_\_
  - e. Under what circumstances either party may withdraw from a plea agreement; \_\_\_\_\_
  - f. What is and what are the pitfalls of a "sub rosa" agreement?; \_\_\_\_\_
  - g. What is a conditional plea? What are the ramifications of entering into one?; \_\_\_\_\_

- h. What plea agreement terms can be used to benefit the victim and/or the accused's dependents?; \_\_\_\_\_ and
  - i. Why an accused's EAOS should be considered during plea agreement negotiations? \_\_\_\_\_
6. \_\_\_\_\_ DRAFT: A plea agreement with the following provisions using the online plea agreement template:
- a. Waiver of administrative separation board; \_\_\_\_\_
  - b. Request trial by military judge alone; \_\_\_\_\_
  - c. Complete restitution; \_\_\_\_\_
  - d. Cooperate in investigation; \_\_\_\_\_
  - e. Identify other criminals and/or criminal activities; \_\_\_\_\_
  - f. Testify as a witness in other case(s); \_\_\_\_\_
  - g. Waiver of a specific motion; \_\_\_\_\_
  - h. Explicit, specific waiver of Article 13, UCMJ motion; \_\_\_\_\_
  - i. Enter into a stipulation of fact with the government; \_\_\_\_\_
  - j. Not request witnesses at government expense; \_\_\_\_\_
  - k. Not object to specific pre-sentencing evidence on specific grounds; \_\_\_\_\_
  - l. A plea to an LIO, including drafting language for the LIO charge; \_\_\_\_\_
  - m. A plea by exceptions and substitutions; \_\_\_\_\_
  - n. Withdraw or dismiss charges based on pleas to LIO; \_\_\_\_\_
  - o. Waiver of forfeiture and reduction; \_\_\_\_\_
  - p. Waiver of statute of limitations; \_\_\_\_\_ and
  - q. Request for deferral and waiver of forfeitures in favor of dependents. \_\_\_\_\_
7. \_\_\_\_\_ KNOW: The issues surrounding sex offender registration in plea agreements as addressed in *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006).
8. \_\_\_\_\_ OBSERVE: The STC/SDC or TC/DC conduct plea agreement negotiations.
9. \_\_\_\_\_ DISCUSS: A SILT/RILT, when it is applicable, how it is drafted, and when it can be used.

**DC Only**

1. \_\_\_\_\_ KNOW: Advice requirements and best practices regarding immigration status, gun ownership, and other collateral consequences of a conviction resulting from a Plea Agreement.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

**18. Stipulations****Review, sign, and date:**

R.C.M. 811	
M.R.E. 410	
MILITARY EVIDENTIARY FOUNDATIONS §12-2	
<i>United States v. Bertelson</i> , 3 M.J. 314 (C.M.A. 1977)	
Military Judges' Benchbook Ch. 2, § VII, para 2-7-25	

**Initial and Date:**1. NJS KNOW:

- a. Distinguish stipulations of fact from stipulations of expected testimony;
- b. What should/should not be in a stipulation of fact?;
- c. Proper and authorized uses at trial of a stipulation of fact or a stipulation of expected testimony; and
- d. Judicial notice.

2. \_\_\_\_\_ KNOW: Are stipulations required in a guilty plea case? Is there any way the accused's stipulation may be used against the accused if the government withdraws from the plea agreement?

3. \_\_\_\_\_ DISCUSS: The advantages/disadvantages of using stipulations in other contexts (contested case or at sentencing)? What are the accused's confrontation rights as to witnesses and other evidence? Discuss situations where it may be helpful to utilize a stipulation, and scenarios where it may not be beneficial.

**TC Only:**

1. \_\_\_\_\_ DRAFT: A stipulation of fact and a stipulation of expected testimony for a case with which you are assisting a Trial Counsel

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_

## **19. Trial Preparation: Evidence and Witnesses**

**Review, sign, and date:**

M.R.E. 607, 608, 609, 612, and 613	NJS
Military Evidentiary Foundations Guide	NJS
R.C.M. 703(e)(2)	
R.C.M. 914A and 914B	

**Initial and Date:**

1. NJS PREPARE: The foundation to admit a document.
2. NJS EXPLAIN: How to present a piece of self-authenticating evidence (i.e. blue ribbon copy of service record) and when it can be used.
3. NJS EXPLAIN: How to conduct a presentation of documentary evidence with witness authentication.
4. NJS OBSERVE: Preparing a client (DC) or alleged victim (TC) to testify in a contested case, including for direct and cross-examination.
5. \_\_\_\_\_ EXPLAIN: The procedure for issuing subpoenas to civilian witnesses and invitational orders to witnesses not subject to subpoena pursuant to R.C.M. 703(e)(2).
6. \_\_\_\_\_ PREPARE: A response to a defense request for an expert witness (TC) or a request for an expert witness (DC).

**TC Only:**

1. \_\_\_\_\_ DRAFT: A Subpoena Duces Tecum to obtain documentary evidence and discuss how it can be used. Discuss the difference between using a subpoena and obtaining a warrant, and limitations of each.
2. \_\_\_\_\_ DRAFT: A preservation request for documentary evidence or electronic/content information, such as text message, email, social media posts.
3. \_\_\_\_\_ DRAFT: A subpoena for a witness.
4. \_\_\_\_\_ EXPLAIN: How to secure travel for military and civilian witnesses to a court-martial to include issuing command invitation letters and subpoenas.

**DC Only:**

1. \_\_\_\_\_ DRAFT: A witness production request.
2. \_\_\_\_\_ DRAFT: A request for the production of evidence.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/Department Head)

DATE \_\_\_\_\_

## **20. Case (Members)**

**Review, sign, and date:**

R.C.M. 913	
R.C.M. 908	
R.C.M. 919	

**Initial and Date:**

1. NJS REVIEW: The requirements for a proper Convening Order and amendments to a Convening Order, focusing on member selection.
2. \_\_\_\_\_ REVIEW: The members' questionnaires selected by the Convening Authority.
3. NJS PREPARE: Group and individual voir dire of members.
4. NJS EXPLAIN: The challenge process. UNDERSTAND the difference between challenges based upon implied bias and actual bias. REVIEW quorum requirements necessary for SPCM or GCM.
5. \_\_\_\_\_ PREPARE: Members' Findings Instructions and a Findings worksheet.
6. \_\_\_\_\_ READ: An existing record of trial where rebuttal evidence was properly submitted.

**TC Only:**

1. \_\_\_\_\_ PREPARE and UNDERSTAND: The trial script for empaneling members.
2. \_\_\_\_\_ OBSERVE/DISCUSS WITH STC: The presentation of rebuttal evidence.
3. \_\_\_\_\_ EXPLAIN: How to respond to a defense motion under R.C.M. 917 at the conclusion of the government's case. Know the standard of proof for this motion and whether or not the government can reopen the case.

RECOMMENDED \_\_\_\_\_  
(PDTO/Branch/OIC/Department Head)

DATE \_\_\_\_\_



**21. Sentencing Case****Review, sign, and date:**

R.C.M. 1001	NJS
R.C.M. 1002 and 1003	NJS
R.C.M. 1001(g)	NJS
Military Judges' Benchbook Judge Alone Sentencing and Members Sentencing	NJS
Chapter X of the MCM	
JAGMAN Section 0141	
<i>United States v. Holt</i> , 27 M.J. 57 (C.M.A. 1988)	
<i>United States v. Nourse</i> , 55 M.J. 229 (C.A.A.F. 2001).	
<i>United States v. Marsh</i> , 70 M.J. 101 (C.A.A.F. 2011); <i>United States v. Schroder</i> , 65 M.J. 49 (C.A.A.F. 2007).	
<i>United States v. Talkington</i> , 73 M.J. 212 (C.A.A.F. 2013)	
U.S. Army JAG School Criminal Law Deskbook – Findings and Sentencing (Volume III)	
<b>DC Only:</b> DCAP Deskbook Chapter on Sentencing	

**Initial and Date:**

1. NJS EXPLAIN: What types of evidence can and cannot be used as evidence in aggravation.
2. NJS DISCUSS: The differences between Extenuation and Mitigation evidence.
4. NJS EXPLAIN: How and when the rules of evidence may be relaxed and the impact of doing so. Give an example of when it would be advantageous not to relax the rules of evidence.
5. \_\_\_\_\_ OBSERVE: A presentencing phase of a court-martial and argument on sentence.
6. \_\_\_\_\_ KNOW: Local confinement facility requirements for an accused convicted at court-martial.
7. \_\_\_\_\_ ASSIST: Preparation of a pre-sentencing case.

8. \_\_\_\_\_ ASSIST: Preparation of a sentencing argument.
9. \_\_\_\_\_ KNOW: What constitutes an improper argument at sentencing.

**DC Only:**

1. \_\_\_\_\_ REVIEW: A Post-Trial Rights Advisement Form.
2. \_\_\_\_\_ OBSERVE: A client being advised on post-trial and appellate rights.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/ OIC/Department Head)

## **22. Post-Trial Duties and Administrative Actions**

**Review, sign, and date:**

Articles 54, 57, 60, and 65 UCMJ	
<i>United States v. Moreno</i> , 63 M.J. 135 (C.A.A.F. 2006)	
CNLSCINST 5800.4 [series], paragraph h(11)	
18 U.S.C. 922(g)	

**Initial and Date:**

1. \_\_\_\_\_ REVIEW/DISCUSS: JAG/CNLSC 5814.1B – Post-Trial Processing for cases referred before 1 Jan 19.
2. \_\_\_\_\_ REVIEW/DISCUSS: JAG/CNLSC 5814.1D – Post-Trial Processing for cases referred to after 1 Jan 19.

**DC Only:**

1. \_\_\_\_\_ DISCUSS: Submitting clemency as a defense counsel.
2. \_\_\_\_\_ DISCUSS: The procedure and appropriate basis for making a post-trial motion.
3. \_\_\_\_\_ DISCUSS: How to review the Report of Court Martial Results as well as the CA's Action and Entry of Judgment.
4. \_\_\_\_\_ DISCUSS: Submitting clemency as a defense counsel.
5. \_\_\_\_\_ DISCUSS: Submitting a Petition for Review of a Conviction Under Article 69
6. \_\_\_\_\_ KNOW: The process for assignment of Appellate Defense Counsel.

**TC Only:**

1. \_\_\_\_\_ OBSERVE: A TC prepare post-trial paperwork and conduct post-trial notifications including VWAP.
2. \_\_\_\_\_ PREPARE: A Report of Results of Trial/Statement of Trial Results (MJA16) for STC review and signature by the military judge.

3. \_\_\_\_\_ COMPLETE: A Confinement Order.
4. \_\_\_\_\_ ASSEMBLE: All required paperwork that must accompany an accused to the brig.
5. \_\_\_\_\_ DISCUSS: Preparing the Entry of Judgement.

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/Department Head)

**TRIAL OR DEFENSE COUNSEL**

RECOMMENDED \_\_\_\_\_ DATE \_\_\_\_\_  
(PDTO/Branch/Department Head)

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I CERTIFY THAT \_\_\_\_\_ HAS COMPLETED THE  
PROFESSIONAL DEVELOPMENT STANDARDS REQUIRED OF A TRIAL/DEFENSE  
COUNSEL.

\_\_\_\_\_  
Commanding Officer  
[Command] DATE \_\_\_\_\_

**[Once complete, command retains a copy of this page and the original goes to Officer for retention]**

