

CERTIFIED RECORD OF TRIAL

(and accompanying papers)

of

Ice

Corey

D.

(Last Name)

(First Name)

MI

(DoD ID No.)

9th Marine Corps District, West Recruiting Region

USMC

Marine Recruit Depot San Diego, California

(Unit/Command Name)

(Branch of Service)

(Location)

By

Special Court-Martial (SCM)

COURT-MARTIAL

(GCM, SPCM, or SCM)

Convened by

Commanding Officer

(Title of Convening Authority)

9th Marine Corps District, San Diego, California

(Unit/Command of Convening Authority)

Tried at

Marine Corps Air Station Miramar, California

On

23 February and 29 March 2024

(Place or Places of Trial)

(Date or Dates of Trial)

Companion and other cases

None.

(Rank, Name, DoD ID No., (if applicable), or enter "None")

CONVENING ORDER



UNITED STATES MARINE CORPS
9TH MARINE CORPS DISTRICT
2223 LUCAS BLVD, BLDG 523
GREAT LAKES, ILLINOIS 60088

IN REPLY REFER TO
5813
ADJ

JAN 30 2024

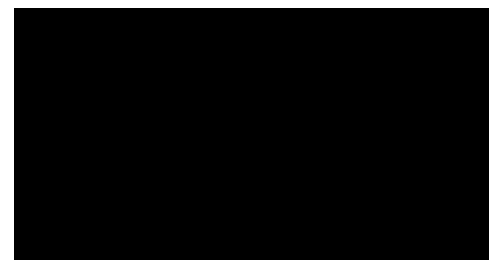
SPECIAL COURT-MARTIAL CONVENING ORDER 1-24

Pursuant to the authority contained in R.C.M. 504(b)(2) and Judge Advocate General section 0120b, a Special Court-Martial is hereby convened to hear all those cases properly referred to it, with the following members:

MEMBERS

Chief Warrant Officer 2 [REDACTED] U.S. Marine Corps;
First Lieutenant [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Lieutenant Colonel [REDACTED] U.S. Marine Corps;

[REDACTED]
Colonel
U.S. Marine Corps
Commanding Officer



CHARGE SHEET

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) ICE, Corey D.		2. EDIPI [REDACTED]	3. RANK/RATE SSgt	4. PAY GRADE E-6
5. UNIT OR ORGANIZATION 9th Marine Corps District, Western Recruiting Region, Marine Corps Recruit Depot San Diego, California			6. CURRENT SERVICE	
			a. INITIAL DATE 15 Sept 17 04 Oct 13	b. TERM 4 yrs + 2 yrs Ext. + 2 yrs Ext.
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$4,387.80 \$4,171.03	b. SEA/FOREIGN DUTY None	c. TOTAL \$4,387.80 \$4,171.03		None. N/A

II. CHARGES AND SPECIFICATIONS

10. CHARGE 1: VIOLATION OF THE UCMJ, ARTICLE 92

Specification 1 (VIOLATION OF A LAWFUL GENERAL ORDER): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, violate a lawful general order which was his duty to obey, to wit: paragraph 4(b)(5) of Depot Order 1100.4C dated 3 November 2016, by wrongfully communicating in an unprofessional or personal manner with [REDACTED] who he knew was an applicant to the armed forces.

Specification 2 (VIOLATION OF A LAWFUL GENERAL ORDER): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, violate a lawful general order which was his duty to obey, to wit: paragraph 4(b)(5) of Depot Order 1100.4C dated 3 November 2016, by wrongfully communicating in an unprofessional or personal manner with [REDACTED] who he knew was an applicant to the armed forces.

Specification 3 (VIOLATION OF A LAWFUL GENERAL ORDER): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, violate a lawful general order which was his duty to obey, to wit: paragraph 4(b)(5) of Depot Order 1100.4C dated 3 November 2016, by wrongfully sending a picture of his penis to [REDACTED] who he knew was an applicant to the armed forces.

(SEE SUPPLEMENTAL CHARGE SHEET)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE E-5	c. ORGANIZATION OF ACCUSER HqHqRon, MCAS Miramar, California
d. SIGNATURE OF ACCUSER [REDACTED]	e. DATE 23 October 2023	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 23rd day of October 2023, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

C. C. SANFORD
Typed Name of Officer

CAPTAIN, USMC

Signature

HqHqRon, MCAS Miramar
Organization of Officer

TRIAL COUNSEL

Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

12 On 30 October, 20 23, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

Typed Name of Immediate Commander

9th MCD, MCRD, San Diego, California

Organization of Immediate Commander

CAPTAIN, USMC

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1642 hours, 23 October 20 23 at 9th MCD, MCRD, San Diego, California

Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE: COMMANDING OFFICER

LEGAL OFFICER

Official Capacity of Officer Signing

Typed Name of Officer

CAPTAIN, USMC

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

Marine Corps Recruit Depot/Western Recruiting Region

San Diego, California

30 January 24

Referred for trial to the Special court-martial convened by SPCMCO #1-24

Dated 30 January 20 24, subject to the following instructions: None.

by _____ of _____
Command or Order

Typed Name of Officer

Commanding Officer

Official Capacity of Officer Signing

O-6

Grade

15. On 30 January, 20 24, I (caused to be) served a copy hereof on the above named accused.

C. C. SANFORD

Typed Name of Trial Counsel

CAPTAIN, USMC

Grade or Rank of Trial Counsel

FOOTNOTES

1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 401(e) concerning instructions. If none, so state.

SUPPLEMENTAL CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. EDIPI	3. RANK/RATE	4. PAY GRADE
ICE, Corey D.		SSgt	E-6

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93a

Specification 1 (PROHIBITED ACTIVITIES WITH RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, a noncommissioned officer, while in a position of authority over [REDACTED] did, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, engage in a prohibited act, to wit: sexual contact with [REDACTED] whom the accused knew was an applicant to the armed forces, by touching [REDACTED] vulva with his mouth with an intent to arouse or gratify the sexual desire of the accused.

Specification 2 (PROHIBITED ACTIVITIES WITH RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, a noncommissioned officer, while in a position of authority over [REDACTED] did, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, engage in a prohibited act, to wit: a sexual act with [REDACTED] whom the accused knew was an applicant to the armed forces, by penetrating the vulva of [REDACTED] with his penis.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 120

Specification (ABUSIVE SEXUAL CONTACT WITHOUT CONSENT): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, did, at or near Sedalia, MO, on or about 10 August 2022, touch the breast of [REDACTED] with the said Staff Sergeant Ice's hand, with an intent to gratify the sexual desire of Staff Sergeant Ice without the consent of [REDACTED]

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 134

Specification (EXTRAMARITAL SEXUAL CONDUCT): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, a married person, did, on divers occasions, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, wrongfully engage in extramarital conduct, to wit: sexual acts with [REDACTED], a person the accused knew was not the accused's spouse, and that such conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(END)

ORIGINAL

TRIAL COURT MOTIONS & RESPONSES

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
SPECIAL COURT-MARTIAL

UNITED STATES

.

COREY D. ICE
STAFF SERGEANT
U. S. MARINE CORPS

VICTIM LEGAL COUNSEL'S
MOTION FOR APPROPRIATE
RELIEF
(Rejection of Plea Agreement)

23 January 2024

MOTION

Victims Legal Counsel for LCpl [REDACTED] moves this court pursuant to R.C.M. 910 to reject the submitted plea agreement in this case due to the convening authority's violating LCpl [REDACTED] rights under Article 6b, UCMJ and R.C.M. 705(e)(3)(B).

FACTS

1. The accused in this case is charged with the following offenses:
 - a. Three specifications of violating Article 92, (Violation of a Lawful General Order);
 - b. Two specifications of violating Article 93a, (Prohibited Activities with a Recruit or Trainee by Person in Position of Special Trust);
 - c. One specification of violating Article 120, (Abusive Sexual Contact without Consent);
 - and
 - d. One specification of violating Article 134, (Extramarital Sexual Conduct). Encl. (1).
2. There are two named victims in this case: [REDACTED] and [REDACTED]
3. Victim [REDACTED] is represented by Victims Legal Counsel, Capt Robert C. Pyatt, who is currently assigned to the Victims Legal Counsel Organization-East based on Marine Corps Base Camp Lejeune, North Carolina.
4. Between 10 and 23 January 2024, the following events took place (See Enclosure (2)):

APPELLATE EXHIBIT V

- a. **10 January** – Capt Canyon Sanford, Trial Counsel, emailed Capt Pyatt with a proposed plea agreement submitted by the defense (and provided here as Enclosure (1)) for comment by the named victim [REDACTED]
- b. **10 January** – Capt Pyatt replied saying he will forward the proposed plea agreement to [REDACTED]
- c. **11 January** – Capt Sanford emailed Capt Pyatt notifying him that the convening authority had accepted the proposed plea agreement and signed it on 10 January 2024.
- d. **18 January** – Capt Pyatt emailed Trial Counsel and the command Staff Judge Advocate asking, *Enter alia*, for the convening authority to withdraw from the signed plea agreement because he failed to consult the victim in accordance with R.C.M. 705(e)(3)(B).
- e. **18 January** – The command Staff Judge Advocate replied saying he will discuss VLC's concerns with the convening authority.
- f. **23 January** – Capt Pyatt emailed the Trial Counsel and Staff Judge Advocate for an update. Capt Sanford responded that the convening authority denied VLC's request to withdraw from the plea agreement. Encl. (3).

LAW

As stated in the 2019 edition of the Manual for Courts-Martial, Article 6b(a)(8), UCMJ guarantees a victim of an offense the right to be treated with fairness and with respect for the victim's dignity.

¹ Enclosure (2) shows 0522 as the time that Capt Pyatt sent the email response to Capt Sanford. VLC believes this is due to the email being 'caught' in VLC's outbox. VLC hit the 'send' button moments after receiving the initial email from Capt Sanford on 10 January.

R.C.M. 705 of the 2019 edition of the Manual for Courts-Martial states that, “whenever practicable, prior to the convening authority accepting a plea agreement the victim shall be provided an opportunity to submit views concerning the plea agreement terms and conditions[.]” Per the rule, the convening authority “shall consider any such views provided [by the victim] prior to accepting a plea agreement.” R.C.M. 705(e)(3)(B) (Emphasis added). The rule also provides that a plea agreement may not contain any terms or conditions which are prohibited by law or public policy. R.C.M. 705(e)(3)(A). Lastly, the rule allows a court-martial to adjudge a sentence with limitations only on the maximum punishment, the minimum punishment, or both. It does not provide for specified sentencing. R.C.M. 705(d)(1)(A)-(C)(MCM 2019 ed.).

Per R.C.M. 910, a Military Judge may either accept or reject a plea agreement during a plea agreement inquiry. R.C.M. 910(f)(6) and (7). A Military Judge “may not” accept a plea agreement if it is found during a plea agreement inquiry that the plea agreement does not comply with R.C.M. 705. R.C.M. 910(f)(1). Per R.C.M. 910(f)(8) of the 2024 edition of the Manual for Courts-Martial, a Military Judge “shall reject a plea agreement that . . . (D) is prohibited by law (e.g. not following the procedures of R.C.M. 705); or (E) is contrary to, or is inconsistent with, [the rules for courts-martial] with respect to the terms, conditions, or other aspects of plea agreements.” (Emphasis added). If the Military Judge rejects the plea agreement, the Military Judge shall 1) issue a statement explaining the basis for the rejection; 2) allow the accused to withdraw any plea; and 3) inform the accused that if the plea is not withdrawn the court-martial may impose any lawful punishment. R.C.M. 910(f)(7).

Article 6b(e) provides that “if the victim of an offense under this chapter believes that a . . . court-martial ruling violates the rights of a victim afforded by [an article] or rule specified in

paragraph (4) [of Article 6b], the victim may petition the Court of Criminal Appeals for a writ of mandamus to require . . . the court-martial to comply with the [article] or rule.”

ARGUMENT

The case before the court is a textbook example of the ongoing conflict in the military justice system between the discretion of a convening authority (and now the Special Trial Counsel), the rights of victims of crime, and the rules and procedures in place intended to protect those rights.

In this case, the accused is charged with violating Article 92 (Violation of a Lawful Order), Article 93a (Prohibited Activities with a Recruit or Trainee by a Person in Position of Special Trust), Article 120 (Abusive Sexual Contact), and Article 134 (Extramartial Sexual Conduct). The charges and specifications thereunder involve two victims: [REDACTED] and [REDACTED]

Per the plea agreement submitted by the parties, the accused has offered to plead guilty to one specification of Article 92, two specifications of Article 93a, and one specification of Article 134. Each of these specifications involve victim [REDACTED]; none of them involve victim [REDACTED]. The accused offers to plead Not Guilty to all other charges and specifications.

This plea agreement was first provided to the Victims Legal Counsel for victim [REDACTED] on 10 January 2024 by the trial counsel, Capt Sanford. The VLC responded to Capt Sanford promising to forward the agreement to his client, victim [REDACTED] for comment pursuant to R.C.M. 705. The next day, and before the victim was able to view the agreement, let alone comment on it, the VLC was notified by the trial counsel that the convening authority had already signed the agreement. The signature line of the convening authority shows that it was signed on 10 January 2024—the same day the VLC was first notified of this plea agreement. When the VLC asked the trial counsel and command staff judge advocate why the agreement was rushed through, the

convening authority provided no explanation. The trial counsel then responded that the VLC's request to withdraw from the plea agreement was rejected, again with no explanation.

With the above facts in mind, the Victims Legal Counsel for victim [REDACTED] moves this court to REJECT the subject plea agreement for the following reasons:

1. R.C.M. 910(f)(1) mandates that the Military Judge reject plea agreements which violate R.C.M. 705.

R.C.M. 910 allows a Military Judge to accept or reject a plea agreement during the plea agreement inquiry. However, the rule does not give Military Judges unfettered discretion in accepting or rejecting plea agreements. As stated in subsection (f)(1):

(f) Plea agreement inquiry.

(1) In general. A plea agreement may not be accepted if it does not comply with R.C.M. 705.

R.C.M. 705 lays out the procedures for drafting, proposing and accepting or rejecting plea agreements by the convening authority, as well as the permissible terms, potential punishments, and the limitations placed on sentencing. As described in subparagraph (e)(3)(B):

Whenever practicable, prior to the convening authority accepting a plea agreement the victim shall be provided an opportunity to submit views concerning the plea agreement terms and conditions[.] The convening authority shall consider such views provided prior to accepting a plea agreement. (Emphasis added).

As shown in Enclosure (1), the convening authority, through trial counsel, first notified the victim of the proposed plea agreement to 10 January 2024. The next day, before the victim was even able to view the agreement let alone state an opinion, the trial counsel notified VLC that the convening authority had already signed the agreement. The signature line reveals the

convening authority signed the agreement the same day the victim was first notified of the deal. When asked why the deal was rushed through, neither trial counsel nor the command staff judge advocate had any explanation. As such, the convening authority violated R.C.M. 705 by failing to provide victim [REDACTED] the opportunity to submit her views on the agreement. Since victim [REDACTED] could not state her opinion, the convening authority could not take her views into account before agreeing to the deal. When asked via email why it was not “practicable” for the command to confer with the victim, the staff judge advocate provided no explanation.

In short: the convening authority violated R.C.M. 705 and failed to give any justifiable explanation for doing so. R.C.M. 910 is clear: the Military Judge “may not” accept this proposed plea agreement.

2. Accepting the proposed plea agreement would violate the law (specifically R.C.M. 910) and public policy.

While R.C.M. 910(f)(1) requires the Military Judge to reject this plea agreement, R.C.M. 705(e)(1) also requires the judge to reject this plea agreement because its terms violate both the law and public policy.

As discussed above, the convening authority violated R.C.M. 705(e)(3)(B)—the law—by not conferring with the victim. But subparagraph (e)(1) of that rule also states that a convening authority may not include terms in an agreement which violate public policy. It is no secret that the military justice system has undergone tremendous changes over the last several years. Since the commission of the charged offenses in this case, the U.S. Congress has implemented numerous changes to the military justice system, including the Office of Special Trial Counsel, and adding to or modifying the Manual for Courts-Martial and Rules for Courts-Martial. Several of these changes relate directly to the topic of this motion, such as:

- a. A change in subparagraph (a)(8) of Article 6b, which gives a victim the right to be “informed in a timely manner” of any plea agreement; and
- b. Additions to R.C.M. 910, stating that a Military Judge “*shall* reject a plea agreement that . . . (D) is prohibited by law (e.g. not following the procedures of R.C.M. 705); or (E) is contrary to, or is inconsistent with, [the rules for courts-martial] with respect to the terms, conditions, or other aspects of plea agreements. (Emphasis added).

The implementation of these changes to the MCM and RCMs reflects Congress’s public policy (commander’s intent?) of protecting and defending the constitutional and statutory rights of victims. In this case, the convening authority agreed to have the accused plead Not Guilty to all the offenses involving victim [REDACTED] a victim who was deprived of the opportunity to state her opinion on those terms. By disregarding the victim’s rights and preferences and including terms she does not endorse, the convening authority is violating Congress’s clear public policy of ensuring victims are heard prior to plea agreements being entered into by the command. Because this deal violates Congress’s clear public policy, the Military Judge must reject this agreement pursuant to R.C.M. 705(e)(1).

3. The plea agreement is legally unenforceable since it includes sentencing terms not authorized by the 2019 edition of the Manual for Courts-Martial.

Subparagraph 10 of the plea agreement contains the sentencing limitations on the Military Judge. Per the agreement, the Military Judge “shall” adjudge a Bad Conduct Discharge. No confinement, forfeitures, fines, reductions, or other lawful punishments may be adjudged under this agreement.

Per R.C.M. 705(d)(1) of the 2019 MCM, a plea agreement may contain limitations on sentences adjudged by a Military Judge. These limitations can include a limitation on 1) the maximum sentence adjudged; 2) the minimum sentence adjudged; or 3) both the maximum and

minimum sentences adjudged. Unlike the 2024 edition of the Manual for Courts-Martial, the 2019 edition of the MCM does not authorize a "specified sentence." If the Military Judge were to accept this plea agreement, they would be openly violating the version of R.C.M. 705 in effect at the time the charged offenses occurred. This would itself be a violation of R.C.M. 910 as discussed above. Additionally, accepting this plea agreement which deprives the Military Judge of all discretion in sentencing would make the pre-sentencing procedure a "hollow exercise" for all parties involved, since no evidence in aggravation, mitigation, extenuation or impact on the victim would be able to impact the sentence received. *United States v. Geier* 2022 CCA LEXIS 468.

4. The convening authority's disregard for the requirements of R.C.M. 705(e)(3)(B) violated victim [REDACTED] Article 6b right to be treated with fairness and dignity.

Article 6b, UCMJ contains the various rights afforded to victims of crime, including the right to be treated "with fairness and with respect for the dignity" of the victim. Art. 6b(a)(8). If the ruling of a court-martial violates a right guaranteed to a victim under Article 6b, the victim may seek redress from the Navy-Marine Corps Court of Criminal Appeals in the form of a writ of mandamus. Art. 6b(e)(1).

As described at length above, the convening authority completely disregarded the requirements of R.C.M. 705 which requires that he consult with the victim prior to accepting a plea agreement. When asked why he failed to do so, the convening authority gave no explanation, and refused to withdraw from the agreement despite the legal arguments made by Victim Legal Counsel describing, in detail, the command's obligations under Article 6b and R.C.M. 705. By declining to consider the victim's input on two separate occasions without any explanation, the command violated PFC [REDACTED] right to be treated with fairness and respect for her dignity as a victim of an offense. By violating her R.C.M. 705 right to be consulted and

accepting a plea agreement which completely writes off any offenses of which [REDACTED] is a victim, the command has also deprived her of the right to make a statement at the pre-sentencing proceeding about how the charged offenses impacted her. In short: the command doesn't care what happened to [REDACTED] what she thinks of the deal, and what she has to say about the accused. In addition to being unfair to [REDACTED] the command's actions also risk impacting "the actual and perceived fairness of the military justice system" in regard to the rights of victims. *United States v. Baker*, 2022 CCALLEXIS 523 (unpub. op.)(quoting *United States v. Bartlett*, 64 M.J. 641, 649 (A. Ct. Crim. App. 2007)). By accepting this plea agreement in light of these facts, the court would be violating PFC [REDACTED] rights under Article 6b, forcing VLC to file a request for a writ of mandamus before the court of appeals. Therefore, the court should reject this plea agreement.

RELIEF REQUESTED

With the above facts and law in mind, the victim, through counsel, moves this court to reject the plea agreement submitted in this case.

If the Military Judge declines to reject the plea agreement, the victim moves this court for a stay of the pre-sentencing proceedings in this case in order to file a request for a Writ of Mandamus to the Navy-Marine Corps Court of Criminal Appeals.

In support of this motion, Victims Legal Counsel provides the following evidence:

Enclosure (1) – Submitted plea agreement signed by Col [REDACTED] on 10Jan24

Enclosure (2) – Email chain between Capt Pyatt, Capt Sanford and LtCol [REDACTED]

Enclosure (3) – Follow-up email chain between Capt Pyatt and Capt Sanford



[REDACTED]
ROBERT C. PYATT
Captain, U.S. Marine Corps
Victims Legal Counsel for LCpl [REDACTED]

APPELLATE EXHIBIT IV

*****=*****

Certificate of Service

I hereby attest that a copy of the foregoing motion was served on the court and opposing counsel personally on 23 February 2024.


ROBERT C. PYATT
Captain, U.S. Marine Corps
Victims Legal Counsel for LCpl 



UNITED STATES MARINE CORPS
WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
SPECIAL COURT-MARTIAL

UNITED STATES

v.

COREY D. ICE
STAFF SERGEANT
U.S. MARINE CORPS

JOINT MOTION
FOR APPROPRIATE RELIEF

(Continuance Request)

14 March 2024

MOTION

Pursuant to Rule for Courts-Martial 906(b)(1), the Defense and Government jointly move the Court for a continuance of the subject case to 29 March 2024.

SUMMARY

1. The plea hearing for Staff Sergeant Ice is currently scheduled for 22 March 2024.
2. Staff Sergeant Ice informed his counsel on 13 March 2024 that 22 March 2024 would not work due to issues with finding appropriate childcare for his son, who requires specialized care due to EFMP.
3. Prior to informing counsel about his no childcare being available for 22 March 2024 in Missouri, SSgt Ice believed that he had found adequate childcare in Missouri. However, due to a scheduling issue outside of Defense's and SSgt Ice's control, SSgt Ice now needs to drive six to eight hours to Kentucky in order to drop his son off with his in-laws to receive proper care.
4. Staff Sergeant Ice's wife and the child's mother is unavailable, as she is currently at Army Basic Training.
5. The child also has spring break from 25 March 2024 to 29 March 2024, which allows Staff Sergeant Ice to drive the child to Kentucky without the child missing any school.
6. Staff Sergeant Ice needs the extra week in order to be able to drive his son from Columbia, Missouri, to Louisville, Kentucky, to drop his son off with his in-laws, fly to California to meet with counsel and attend the hearing, and then return to Kentucky to pick up his son to drive back to Missouri.

APPELLATE EXHIBIT

PAGE 1 OF 3

LAW

Rule for Courts-Martial 906(a) allows a party to file a motion for appropriate relief to request a "ruling to cure a defect which deprives a party of a right or hinders a party from preparing for trial or presenting its case." According to the discussion to Rule for Courts-Martial 906(b)(1), the military judge "should, upon a showing of reasonable cause, grant a continuance to any party for as long and as often as is just." The Court of Appeals for the Armed Forces has held that "unreasonable and arbitrary insistence upon expeditiousness in the face of justifiable request for delay" is an abuse of discretion. *United States v. Weisbeck*, 50 M.J. 461, 466 (C.A.A.F. 1999) (citing *United States v. Soldevila-Lopez*, 17 F.3d 480, 487 (1st Cir. 1994)).

APPLICATION

Staff Sergeant Ice is the sole caretaker of his child, who needs specialized care. While originally the trial date of 22 March 2024 was sufficient for him to get that childcare, issues outside of his and the parties control now prevent that. Staff Sergeant Ice is getting the care necessary to be at the trial, but now must travel over state lines to get childcare for his son, then travel via air to San Diego. Staff Sergeant Ice and the parties show there is good cause for this continuance when he has secured this specialized care and the date of 29 March 2024 will be final and need not be moved.

RELIEF REQUESTED

The Defense and Government jointly and respectfully requests the Court to continue the scheduled plea hearing from 22 March 2024 to 29 March 2024 when Staff Sergeant Ice, all members of the Defense, and the Government are available and present.

Neither party requests oral argument.

Respectfully Submitted,


S. Vale
First Lieutenant, U.S. Marine Corps
Detailed Defense Counsel


C. C. Sanford
Captain, U.S. Marine Corps
Trial Counsel

Court Ruling

The above request is approved/disapproved/approved in part.

Date:

M. M. HARRIS
Lieutenant Colonel
U.S. Marine Corps
Military Judge

NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT
ARTICLE 16(c)(2)(A) SPECIAL COURT-MARTIAL

UNITED STATES

v.

COREY D. ICE
STAFF SERGEANT
U.S. MARINE CORPS

DEFENSE MOTION FOR APPROPRIATE
RELIEF

(CLEMENCY AFFIDAVIT)

11 July 2024

MOTION

The Defense moves the Court to accept and attach as an addendum to the record an affidavit from Staff Sergeant (SSgt) Corey D. Ice, in lieu of an Article 39(a) hearing, regarding his understanding of his request for clemency in relation to his plea agreement dated 27 February 2024, and accepted by the Court on 29 March 2024.

SUMMARY

1. The Defense submitted a clemency request on 29 March 2024.
2. In that clemency request, the Defense requested the Convening Authority suspend the adjudged Bad Conduct Discharge (BCD).
3. Pursuant to R.C.M. 1109, the Convening Authority could not suspend the BCD because 1) SSgt Ice did not provide substantial assistance to the Government, and 2) the Court did not make a recommendation to suspend the BCD.
4. SSgt Ice has returned to the Missouri area since the conclusion of his guilty plea hearing.
5. SSgt Ice is currently the sole caretaker for his son, who requires specialized care due to EFMP.
6. SSgt Ice's wife is currently in Army boot camp and is not set to return until early August.
7. On 11 July 2024, the Court and both Defense and Trial Counsel held an 802 conference to discuss SSgt Ice's understanding of the clemency request, and whether there was any substantial reliance on that clemency request when entering into the plea agreement.
8. In said 802 conference there was a discussion regarding how SSgt Ice's understanding of the clemency request and its relation to his guilty plea would be entered into the record. Possible courses of action included a 39(a) hearing or possibly an affidavit from SSgt Ice.
9. In order to fly to California to meet with counsel and attend an Article 39(a) hearing SSgt Ice would need to drive from Columbia, Missouri to Louisville, Kentucky to drop off his son with his in-laws, in order for him to receive proper care.
10. Defense Counsel contacted SSgt Ice in order to clarify the clemency request.

1 11. SSgt Ice agreed to write and sign an affidavit to attach as an addendum to the record clarifying
2 his understanding of the clemency request and its effect, or lack thereof, on his plea agreement.

3 **RELIEF REQUESTED**

4 The Defense respectfully requests the Court accept SSgt Ice's affidavit in lieu of an Article 39(a)
5 hearing, and attach it as an addendum to the record. This solution would resolve any issues of obscurity
6 in relation to SSgt's understanding of the clemency request and its effect on his decision to plead guilty.
7 This solution provides for judicial economy, as well as alleviating any family and travel stressors SSgt
8 Ice would need to make in order to attend the hearing in San Diego, California.

9 **ENCLOSURE**

10 Encl (1). Affidavit from SSgt Corey D. Ice.

11 Respectfully submitted,

12 

13
14 Van A. Carver

15 Captain, U.S. Marine Corps

16 Detailed Defense Counsel

1
2
3
4
5
6
7
8
9
10
11
12

CERTIFICATE OF SERVICE

A true copy of this motion was served on the Court and trial counsel on the 11th day of JULY 2024.

Respectfully submitted,



Van A. Carver

Captain, U.S. Marine Corps

Detailed Defense Counsel

REQUESTS

THERE ARE NO REQUESTS

NOTICES

THERE ARE NO NOTICES

COURT RULINGS & ORDERS

**THERE ARE NO COURT RULINGS
AND ORDERS**

STATEMENT OF TRIAL RESULTS

STATEMENT OF TRIAL RESULTS

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (last, first, MI)	2. BRANCH	3. PAYGRADE	4. DoD ID NUMBER
Ice, Corey D.	Marine Corps	E-6	
5. CONVENING COMMAND	6. TYPE OF COURT-MARTIAL	7. COMPOSITION	8. DATE SENTENCE ADJUD
9th MCD, Western Recruiting Region, MCRD SD	Special	Judge Alone - MJA16	Mar 29, 2024

SECTION B - FINDINGS

SEE FINDINGS PAGE

SECTION C - TOTAL ADJUDGED SENTENCE

9. DISCHARGE OR DISMISSAL	10. CONFINEMENT	11. FORFEITURES	12. FINES	13. FINE PENALTY
Bad conduct discharge	None	None	None	N/A
14. REDUCTION	15. DEATH	16. REPRIMAND	17. HARD LABOR	18. RESTRICTION
None	Yes <input type="radio"/> No <input checked="" type="radio"/>	Yes <input type="radio"/> No <input checked="" type="radio"/>	Yes <input type="radio"/> No <input checked="" type="radio"/>	Yes <input type="radio"/> No <input checked="" type="radio"/>
19. HARD LABOR PERIOD				
N/A				
20. PERIOD AND LIMITS OF RESTRICTION				
N/A				

SECTION D - CONFINEMENT CREDIT

21. DAYS OF PRETRIAL CONFINEMENT CREDIT	22. DAYS OF JUDICIALLY ORDERED CREDIT	23. TOTAL DAYS OF CREDIT
0	0	0 days

SECTION E - PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

24. LIMITATIONS ON PUNISHMENT CONTAINED IN THE PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

A Bad Conduct Discharge shall be adjudged; No confinement shall be adjudged; No forfeitures shall be adjudged; No fine shall be adjudged; No reduction shall be adjudged; No other lawful punishments shall be adjudged.

SECTION F - SUSPENSION OR CLEMENCY RECOMMENDATION

25. DID THE MILITARY JUDGE RECOMMEND SUSPENSION OF THE SENTENCE OR CLEMENCY?	Yes <input type="radio"/> No <input checked="" type="radio"/>	26. PORTION TO WHICH IT APPLIES	27. RECOMMENDED DURATION

28. FACTS SUPPORTING THE SUSPENSION OR CLEMENCY RECOMMENDATION

SECTION G - NOTIFICATIONS

29. Is sex offender registration required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	Yes <input type="radio"/> No <input checked="" type="radio"/>
30. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	Yes <input checked="" type="radio"/> No <input type="radio"/>
31. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	Yes <input type="radio"/> No <input checked="" type="radio"/>
32. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	Yes <input type="radio"/> No <input checked="" type="radio"/>

SECTION H - NOTES AND SIGNATURE

33. NAME OF JUDGE (last, first, MI)	34. BRANCH	35. PAYGRADE	36. DATE SIGNED	38. JUDGE'S SIGNATURE
Harris, Matthew M.	Marine Corps	O-5	Mar 29, 2024	HARRIS.MATTHEW.MOSLEY Y. [REDACTED]
37. NOTES				

Digitally signed by
HARRIS.MATTHEW.MOSLEY
Date: 2024.03.29
12:19:40 -07'00'

STATEMENT OF TRIAL RESULTS - FINDINGS

SECTION I - LIST OF FINDINGS

CHARGE	ARTICLE	SPECIFICATION	PLEA	FINDING	ORDER OR REGULATION VIOLATED	LIO OR INCHOATE OFFENSE ARTICLE	D
Charge I	92	Specification 1:	Guilty	Guilty	DepO 1100.4C		0
		Offense description	Violation of a lawful general order				
		Specification 2:	Not Guilty	W/D	DepO 1100.4C		0
		Offense description	Violation of a lawful general order				
		Withdrawn and Dismissed	Withdrawn & dismissed w/o prejudice to ripen into prejudice upon completion of appellate review where the findings and sentence have been upheld.				
		Specification 3:	Not Guilty	W/D	DepO 1100.4C		0
		Offense description	Violation of a lawful general order				
Charge II	93a	Specification 1:	Guilty	Guilty			1
		Offense description	Abuse of position as a military recruiter				
		Specification 2:	Guilty	Guilty			1
Charge III	120	Specification:	Not Guilty	W/D			12
		Offense description	Abusive sexual contact without the consent of the other person				
		Withdrawn and Dismissed	Withdrawn & dismissed w/o prejudice to ripen into prejudice upon completion of appellate review where the findings and sentence have been upheld.				
Charge IV	134	Specification:	Guilty	Guilty			1
		Offense description	Extramarital sexual conduct				

MILITARY JUDGE ALONE SEGMENTED SENTENCE

SECTION J - SENTENCING

CHARGE	SPECIFICATION	CONFINEMENT	CONCURRENT WITH	CONSECUTIVE WITH	F
Charge I	Specification 1:	None	N/A	N/A	None
	Specification 2:	N/A	N/A	N/A	None
	Specification 3:	N/A	N/A	N/A	None
Charge II	Specification 1:	None	N/A	N/A	None
	Specification 2:	None	N/A	N/A	None
Charge III	Specification:	N/A	N/A	N/A	None
Charge IV	Specification:	None	N/A	N/A	None

CONVENING AUTHORITY'S ACTIONS

POST-TRIAL ACTION

SECTION A - STAFF JUDGE ADVOCATE REVIEW

1. NAME OF ACCUSED (LAST, FIRST, MI) Ice, Corey D.		2. PAYGRADE/RANK E6	3. DoD ID NUMBER [REDACTED]
4. UNIT OR ORGANIZATION 9th MCD, WFR, MCRD SD		5. CURRENT ENLISTMENT 15-Sep-2017	6. TERM 4 yrs
7. CONVENING AUTHORITY (UNIT/ORGANIZATION) 9th MCD, WFR, MCRD SD	8. COURT-MARTIAL TYPE Special	9. COMPOSITION Judge Alone - MJA16	10. DATE SENTENCE ADJUDGED 29-Mar-2024

Post-Trial Matters to Consider

1. Has the accused made a request for deferment of reduction in grade?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
2. Has the accused made a request for deferment of confinement?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
3. Has the accused made a request for deferment of adjudged forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
4. Has the accused made a request for deferment of automatic forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
5. Has the accused made a request for waiver of automatic forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
6. Has the accused submitted necessary information for transferring forfeitures for benefit of dependents?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
7. Has the accused submitted matters for convening authority's review?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
8. Has the victim(s) submitted matters for convening authority's review?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
9. Has the accused submitted any rebuttal matters?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
10. Has the military judge made a suspension or clemency recommendation?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
11. Has the trial counsel made a recommendation to suspend any part of the sentence?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
12. Did the court-martial sentence the accused to a reprimand issued by the convening authority?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

23. Summary of Clemency/Deferment Requested by Accused and/or Crime Victim, if applicable.

- SJA consulted with the Convening Authority and explained his clemency authority under Art. 60, UCMJ.
- On 29 Mar 2024, Detailed Defense Counsel submitted letter 5000-82 DSO of 29 Mar 24, requesting to suspend the bad conduct discharge.
- The victim did not submit matters pursuant to R.C.M. 1106A.

24. Convening Authority Name/Title Colonel [REDACTED] Commanding Officer	25. SJA Name Lieutenant Colonel [REDACTED]
[REDACTED]	27. Date 25 April 24

Convening Authority's Action -

Ice, Corey D.

SECTION B - CONVENING AUTHORITY ACTION

28. Having reviewed all matters submitted by the accused and the victim(s) pursuant to R.C.M. 1106/1106A, and after being advised by the staff judge advocate or legal officer, I take the following action in this case: [If deferring or waiving any punishment, indicate the date the deferment/waiver will end. Attach signed reprimand if applicable. Indicate what action, if any, taken on suspension recommendation(s) or clemency recommendations from the judge.

I have considered all matters submitted by the accused. The accused's request to suspend the bad conduct discharge is denied. The sentence is approved as adjudged.

29. Convening authority's written explanation of the reasons for taking action on offenses with mandatory minimum punishments or offenses for which the maximum sentence to confinement that may be adjudged exceeds two years, or offenses where the adjudged sentence includes a punitive discharge (Dismissal, DD, BCD) or confinement for more than six months, or a violation of Art. 120(a) or 120(b) or 120b:

N/A

30. Convening Authority's signature



31. Date

240429

32. Date convening authority action was forwarded to PTPD or Review Shop.

ENTRY OF JUDGMENT

ENTRY OF JUDGMENT

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (LAST, FIRST, MI) Ice, Corey D.		2. PAYGRADE/RANK E6	3. DoD ID NUMBER [REDACTED]
4. UNIT OR ORGANIZATION 9th MCD, WRR, MCRD SD		5. CURRENT ENLISTMENT 15-Sep-2017	6. TERM 8 yrs
7. CONVENING AUTHORITY (UNIT/ORGANIZATION) 9th MCD, WRR, MCRD SD	8. COURT-MARTIAL TYPE Special	9. COMPOSITION Judge Alone - MJA16	10. DATE COURT-MARTIAL ADJOURNED 29-Mar-2024

SECTION B - ENTRY OF JUDGMENT

**** MUST be signed by the Military Judge (or Circuit Military Judge) within 20 days of receipt ****

11. Findings of each charge and specification referred to trial. [Summary of each charge and specification (include at a minimum the gravamen of the offense), the plea of the accused, the findings or other disposition accounting for any exceptions and substitutions, any modifications made by the convening authority or any post-trial ruling, order, or other determination by the military judge. R.C.M. 1111(b)(1)]

Charge I: Violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892

Plea: Guilty. **Finding:** Guilty.

Specification 1 (Violation of a lawful general order): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, at or near Jefferson City, between on or about 1 September 2022 and on or about 16 October 2022, violate a lawful general order which was his duty to obey to wit: paragraph 4(b)(5) of Depot Order 1100.4C dated 3 November 2016, by wrongfully communicating in an unprofessional or personal manner with [REDACTED] who he knew was an applicant to the armed forces.

Plea: Guilty. **Finding:** Guilty.

Specification 2 (Violation of a lawful general order): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, at or near Jefferson City, between on or about 1 September 2022 and on or about 16 October 2022, violate a lawful general order which was his duty to obey to wit: paragraph 4(b)(5) of Depot Order 1100.4C dated 3 November 2016, by wrongfully communicating in an unprofessional or personal manner with [REDACTED] who he knew was an applicant to the armed forces.

Plea: Not Guilty. **Finding:** Withdrawn and Dismissed.*

Specification 3 (Violation of a lawful general order): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, at or near Jefferson City, between on or about 1 September 2022 and on or about 16 October 2022, violate a lawful general order which was his duty to obey to wit: paragraph 4(b)(5) of Depot Order 1100.4C dated 3 November 2016, by wrongfully sending a picture of his penis to [REDACTED] who he knew was an applicant to the armed forces.

Plea: Not Guilty. **Finding:** Withdrawn and Dismissed.*

Charge II: Violation of Article 93a, Uniform Code of Military Justice, 10 U.S.C. § 893a

Plea: Guilty. **Finding:** Guilty.

Specification 1 (Prohibited activities with recruit or trainee by person in position of special trust): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, a noncommissioned officer, while in a position of authority over [REDACTED] did, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, engage in a prohibited act, to wit: sexual contact with [REDACTED] whom accused knew was an applicant to the armed forces, by touching [REDACTED] vulva with his mouth with an intent to arouse or gratify the sexual desire of the accused.

Plea: Guilty. **Finding:** Guilty.

-----SEE FINDINGS ON CONTINUATION SHEET-----

12. **Sentence to be Entered.** Account for any modifications made by reason of any post-trial action by the convening authority (including any action taken based on a suspension recommendation), confinement credit, or post-trial rule, order, or other determination by the military judge. R.C.M. 1111(b)(2). If the sentence was determined by a military judge, ensure confinement and fines are segmented as well as if a sentence shall run concurrently or consecutively.

The Military Judge (segmented sentencing) adjudged the following sentence:

- Bad-conduct discharge.

Plea Agreement:

- A bad-conduct discharge shall be adjudged.

- No confinement shall be adjudged.

- No forfeitures shall be adjudged.

- No fines will be adjudged.

- No reduction in grade shall be adjudged.

- No other lawful punishments will be adjudged.

Convening Authority's Action:

- On 29 Mar 2024, the Accused, through counsel, requested that the Convening Authority grant relief from the adjudged bad conduct discharge.

- The Convening Authority denied the Accused's request and "approved" the sentence as adjudged.

- Upon reviewing the clemency request and Convening Authority's Action, the Military Judge identified that the Accused had requested relief that exceeded the Convening Authority's powers. After the Military Judge addressed the matter with the parties in an RCM 8C conference, the defense filed a motion requesting that the Court not order a post-trial Article 39(a) hearing, and instead accept an affidavit from the Accused confirming his understanding that the Convening Authority could not grant the requested clemency, affirming his desire to maintain his pleas despite clemency not being available, and explicitly waiving any request for clemency. The Military Judge granted the motion.

Pretrial confinement credit:

- None.

13. **Deferment and Waiver.** Include the nature of the request, the CA's Action, the effective date of the deferment and date the deferment ended. For waivers, include the effective date and the length of the waiver. RCM 1111(b)

N/A. The Accused did not request for deferment or waiver.

14. **Action convening authority** took on any suspension recommendation from the military judge:

N/A. The Military Judge did not recommend suspension.

15. Judge's signature: 	16. Date judgment entered:
17. In accordance with RCM 11(c)(1), the military judge who entered a judgment may modify the judgment to correct computational or clerical errors within 14 days after the judgment was initially entered. Include any modifications here and resign the Entry of Judgment. 	
18. Judge's signature: HARRIS.MATTHEW.M OSLEY. Digitally signed by HARRIS.MATTHEW.MOSLEY Date: 2024.07.17 13:57:18 -07'00'	19. Date judgment entered: Jul 17, 2024

11. Findings (Continued)

Specification 2 (Prohibited activities with recruit or trainee by person in position of special trust): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, a noncommissioned officer, while in a position of authority over [REDACTED] did, at or near Jefferson City, MO, between or about 1 September 2022 and on or about 16 October 2022, engage in a prohibited act, to wit: a sexual act with [REDACTED], whom the accused knew was an applicant to the armed forces, by penetrating the vulva of [REDACTED] with his penis.
Plea: Guilty. Finding: Guilty.

Charge III: Violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920

Plea: Not Guilty. Finding: Withdrawn and Dismissed.*

Specification (Abusive sexual contact without consent): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, did, at or near Sedalia, MO, on or about 10 August 2022, touch the breast of [REDACTED], with the said Staff Sergeant Ice's hand, with an intent to gratify the desire of Staff Sergeant Ice without the consent of [REDACTED].
Plea: Not Guilty. Finding: Withdrawn and Dismissed.*

Charge IV: Violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934

Plea: Guilty. Finding: Guilty.

Specification (Extramarital sexual conduct): In that Staff Sergeant Corey D. Ice, U.S. Marine Corps, a married person, did, on diverse occasions, at or near Jefferson City, MO, between on or about 1 September 2022 and on or about 16 October 2022, wrongfully engage in extramarital conduct, to wit: sexual acts with [REDACTED] a person the accused knew was not the accused's spouse, and that conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Plea: Guilty. Finding: Guilty.

* After the announcement of the sentence by the Military Judge, the withdrawn charge, and specifications will be dismissed without prejudice to ripen into prejudice upon completion of appellate review where the findings and sentence have been upheld.

APPELLATE INFORMATION

**THERE IS NO APPELLATE
INFORMATION AT THIS TIME**

REMAND

THERE WERE NO REMANDS

**NOTICE OF COMPLETION OF
APPELLATE REVIEW**